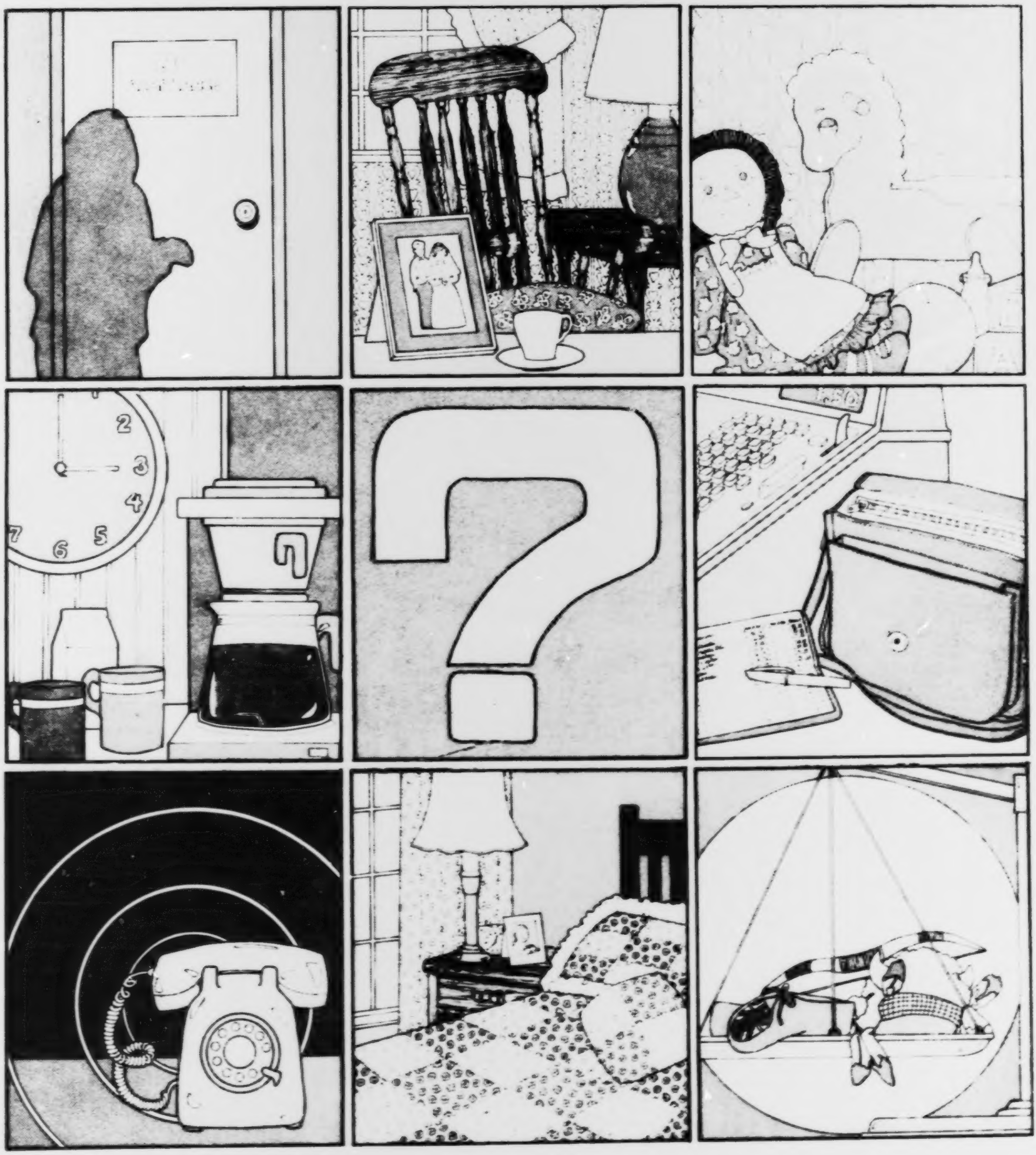
Saskatchewan Advanced Education and Manpower

Women's Services Branch

This is the Law
A Legal Guide for Women



Saskatchewan

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Since the first edition of This is the Law was printed in December 1981, there have been further changes and additions. These were included in the second edition, printed in January 1983.

This insert to the first edition reflects some of the substantial changes to the second edition. Please substitute it for the appropriate sections. Because changes to legislation occur faster than our ability to keep up with them, please check with one of the agencies listed here or with a lawyer. They can tell you if your legal rights have changed since the publication of this booklet and this insert.

In the Labour Standards section, please note that complaints regarding equal pay for similar work, maternity, paternity and adoption leave provisions should now be referred to: Investigator, Labour Standards Branch, Saskatchewan Labour, 1914 Hamilton Street, Regina, S4P 4V4 (phone 565-2453).

Women's Services Branch
June 1983

Freedom from Discrimination

Many times, women have been refused employment, denied housing accommodations or deprived of educational opportunities because of their sex, marital status or race. Such activity is unlawful and women have legal recourse against those who discriminate against them.

The Saskatchewan Human Rights Code

The Saskatchewan Human Rights Code prohibits discrimination on the grounds of race, creed, religion, colour, sex, marital status, physical disability, age, nationality, ancestry or place of origin. Discrimination on the basis of age is only forbidden if the injured party is 18 or over and under 65. The definition of "sex" reads: "sex means gender, and . . . discrimination on the basis of pregnancy or pregnancy-related illnesses is deemed to be discrimination on the basis of sex". Therefore, it is important to keep in mind that where discrimination on the basis of sex is prohibited, so too is discrimination on the basis of pregnancy or pregnancy-related illness. It is an offence to discriminate in any of the following areas:

1) Purchase of Property
No one may deny to any person the opportunity to purchase commercial property, living accommodation or land because of that person's sex, marital status or for any reason listed above. Nor may the seller impose any discriminatory terms or conditions on the sale.

2) Housing Accommodation
No person may practice discrimination in denying occupancy of commerical premises or living accommodations. Discrimination on the basis of sex is allowed if:

   (a) the occupancy in a building is restricted to individuals who are all of the same sex; or

   (b) the building is composed of only two dwelling units and the owner or his/her family resides in one of the two units.

   In any other type of living accommodation, discrimination on the basis of sex is prohibited. Discrimination on the basis of age is not prohibited in this section.

3) Public Services
No person may discriminate in providing public accommodation, services or facilities. However, public accommodation, service or facilities can be refused to any person because of his/her sex on the ground of public decency.

4) Education
Every person has the right to enroll in any school, college or university without discrimination. However, a school may restrict enrolment where it teaches only persons of a particular sex or religion or where it instructs only the physically disabled. In this area, there is no prohibition against discrimination on the basis of age.

5) Publications
No person shall publish or display any message which restricts the rights of a person or is offensive to a person because of his/her race, creed, religion, etc.

6) Employment
No employer shall refuse to employ, or discharge, or otherwise discriminate against any person with respect to employment, or any term or condition of employment, because of his/her race, religion, sex, etc. Discrimination on the basis of sex is prohibited in employment with regard to hiring, promotions, transfers and working conditions.

   An employer is also forbidden to use advertisements which tend to be discriminatory. Nor can an employer ask questions about an applicant's sex, marital status, etc. when he/she is applying for a job.

7) Contracts
No person shall, in making available to any person a contract that is offered to the public, discriminate against or include terms or conditions that discriminate against any person because of his/her race, religion, sex, etc. This section of the Code prohibits discrimination in the granting of credit, rental of vehicles and contracts of insurance. Discrimination based on age and physical disability are not covered under this section.

8) Trade unions and professional associations are prohibited from practising discrimination in denying a right to membership.

Note: Where the word "etc." is used, it refers to the 11 categories listed at the beginning of this section.

How is the Act Enforced?

If there has been a contravention of the Act, anyone may file a complaint with the Saskatchewan Human Rights Commission. The Commission can accept a complaint from a person who was discriminated against. from a third party, or from a person acting on behalf of a class of persons. In addition, the Commission can file a complaint on its own initiative.

Once a complaint has been filed, a human rights officer will inquire into the complaint to determine whether a violation has occurred. When conducting an investigation, the officer may inspect any documents, records or correspondence of the person who allegedly violated the Act. Where a violation is found, the officer will attempt to bring about a settlement of the complaint.

Where no settlement is reached the Commission may direct the Attorney-General to appoint a Board of Inquiry to hear the complaint. The Commission, the complainant and the party against whom the complaint has been filed all appear before the Board.

Each party has the right to present evidence and be represented by a lawyer. Where the Commission has substantiated a violation, the Commission will represent the complainant at the Board of Inquiry at no cost to the complainant.

When the Board has reached a decision, it can make any order it considers necessary to provide full compensation. For example, the Board can order that a complainant be reinstated in a specific job; that the complainant be paid wages or other benefits that he/she has been denied; that the complainant be reimbursed for the extra cost of obtaining alternative goods or accommodations.

The decision of the Board may be appealed to the Court of Queen's Bench within 30 days after the Board has reached its decision. However, the appeal must deal with a question of law, not a question of fact. What is or is not a question of law depends on the circumstances of the case. A person should consult a lawyer or a member of the Saskatchewan Human Rights Commission to determine if the decision can be appealed.

Change of Name

Retaining Maiden Surname

In accordance with a long-standing custom, many women assume the surname of the husband at the time of marriage. However, if a woman who is a resident of Saskatchewan wishes to retain as her legal surname either her maiden surname or the surname which she had immediately prior to her marriage, she may do so under provisions of *The Change of Name Act*. The following points will be of interest to women considering this option:

1) A woman who wishes to use her maiden surname as her legal surname after her marriage must file a notice in the prescribed form with the Director of Vital Statistics in Regina. This notice should be filed as soon as possible following the marriage.

2) If a married woman has assumed the surname of her husband and later wishes to revert to her maiden surname, she may do so at any time during the marriage by filing notice in the prescribed form with the Director of Vital Statistics. Similarly, a woman who legally retained her maiden surname may later file notice with the Director of Vital Statistics that she has decided to assume her husband's surname.

3) The prescribed form and full information regarding these options may be obtained from:

Vital Statistics Division
Saskatchewan Health
3475 Albert Street
REGINA S4S 6X6
(Phone 565-3039)

Adopting a New Surname

If a man and a woman wish to combine their surnames to form a hyphenated surname following their marriage, or if they wish to have other changes made in their names, they should apply for a legal change of name under *The Change of Name Act*. Full information and application forms relating to legal change of name are available from the Division of Vital Statistics in Regina.

A person applying for legal change of name in Saskatchewan must be:

a resident of Saskatchewan;
a Canadian citizen or other British subject; and
at least 18 years of age, or married, widowed or divorced.

The fee for a legal change of name in Saskatchewan is $25 plus payment of the costs for publication of the change of name in *The Saskatchewan Gazette*. These publication costs vary from $5 to $8 depending upon the number of persons listed in the application for the change of name. Following registration of a change of name, the applicant is provided with a change of name certificate which gives legal proof of the change of name which has taken place.

The prescribed application forms and full information regarding legal change of name may be obtained from:

Vital Statistics Division
Saskatchewan Health
3475 Albert Street
REGINA S4S 6X6
(Phone 565-3039)

Women as Parents

Parental Obligations

At Birth

Under *The Vital Statistics Act*, the birth of every child must be registered within 15 days of the birth. The mother is obliged to register the birth of the child, but the father must do so if the mother does not register the birth.

When a child is born in hospital, the registration of birth form is provided to the mother for completion, before she leaves the hospital. When a child is born outside the hospital the parents can get a registration of birth form from a local division registrar or from Vital Statistics in Regina. The completed form is mailed to:

Vital Statistics Division
Saskatchewan Health
3475 Albert Street
Regina, Saskatchewan
S4S 6X6 (Phone 565-3098)

If the parents are married, the child will be given his/her father's surname. If the parents are not married, the registration papers will give the child the mother's surname. Where a child is born to unmarried parents, the child can be registered in the surname of the father, if both parents sign the required declarations for this purpose.

When the parents of a child marry each other subsequent to the child's birth, there is provision to have the registration of birth changed to show the child as being born to married parents. Full information about this provision is available from Vital Statistics, Regina.

Financial Support

Every parent has the obligation to provide a child under the age of 16 with the necessaries of life. Necessaries of life are such things as food, shelter and medical treatment. If a parent fails to provide necessaries and thereby endangers the health of a child or leaves the child in destitute circumstances, he/she is guilty of a criminal offence. It is also a criminal offence to abandon or expose a child under the age of 10 so that his/her life or health is endangered. The maximum penalty for these offences is two years in prison.

Parents' Right to use Physical Force

Parents and teachers have the right to use physical force to discipline a child. If a person uses unreasonably harsh methods of discipline, he/she can be charged with assault. What is a reasonable amount of force depends on the circumstances of the case. If the child is beaten so badly that death results, the parent or teacher can be charged with manslaughter.

Child Abuse and Neglect

Child abuse is any intentional act or omission by a parent or custodian which results in physical or psychological injury to the child. *The Family Services Act* Section 15 provides for the protection of children. Circumstances which may involve the protection of children are:

1) he/she is without proper or competent supervision;

2) he/she is living in circumstances that are unfit or improper for him/her;

3) he/she is in the custody of a person who is unable or unwilling to exercise proper control over the child;

4) his/her life, health or emotional welfare is endangered by the conduct of the person who has custody of the child;

5) the parent or custodian neglects or refuses to provide or obtain proper medical, surgical or other recognized remedial care or treatment necessary for well-being or normal development, or refuses to permit such care or treatment to be supplied to the child when it is considered essential by a duly qualified medical practitioner; or

6) his/her parent is unfit, unable or unwilling to care for him/her.

How Can an Abused Child be Protected?

The Family Services Act is designed to protect the abused or neglected child and to give aid to his/her parents. Under the Act, the court has the power to remove a child from his/her home. It can also order that a parent take certain measures to ensure that the mistreatment does not occur again.

How does the Act Work?

The Family Services Act is of no effect unless incidents of child abuse or neglect are reported to the proper authorities. Everyone who suspects that a child is in need of protection has a legal obligation to report the information to an intake officer of Saskatchewan Social Services or to a police officer.

Indicators of abuse

Teachers may encounter various forms of abuse in their students, aside from the most obvious physical abuse. The Saskatchewan department of social services has defined four basic forms of abuse and neglect which can occur in families:

- Physical abuse — inflicting injury on a child;
- Sexual abuse — engaging a child in sexual activities;
- Emotional neglect and abuse — regularly, and over a long period of time, demanding that children do more than they are capable of doing and criticizing them for not living up to demands; the failure to provide a child with love and affection;
- Physical neglect — failure to provide adequate food, clothing, shelter, medical attention, education, guidance and supervision.

While it may be difficult to detect all of the above forms of abuse and neglect in a child at school, many children will reveal, either physically or behaviorally, that they are being abused. The following is a list of indicators which should alert teachers to the possibility of an abused child in their classroom:

- They appear to be different from other children in physical or emotional make-up, or their parents inappropriately describe them as being "different" or "bad".
- They may often bear welts, bruises, untreated sores or other skin injuries.
- Their injuries seem to be inadequately treated.
- They show evidence of overall poor care.
- They are given inappropriate food, drink or medication.
- They exhibit behavioural extremes: crying often — crying very little, being excessively fearful — fearless of adult authority, being unusually aggressive and destructive — or extremely passive and withdrawn.
- Some are wary of physical contact, especially when it is initiated by an adult — others are inappropriately hungry for affection, yet may have difficulty relating to children and adults.
- They may exhibit a sudden change in behaviour, displaying regressive behaviour, or they may refuse a scheduled activity such as gym.
- They are habitually truant or late to school. Frequent or prolonged absences sometimes result when a parent keeps an injured child at home until the evidence of abuse disappears. In other cases, truancy indicates lack of parental concern or ability to regulate the child's schedule.
- They have learning problems that cannot be diagnosed. Particular attention should be given to the child whose attention wanders and who easily becomes self-absorbed.
- In some cases, they frequently arrive at school too early and remain after classes rather than going home.
- They are always tired and often sleep in class.
- They are inappropriately dressed for the weather. Children who never have coats or shoes in cold weather are receiving subminimal care. On the other hand, those who regularly wear long sleeves or high necklines on hot days may be dressed to hide bruises, burns or other marks of abuse.
- The older child may attribute an injury to an improbable cause — lying for fear of parental retaliation.
- They are behavioural problems in class. Some children come to expect abusive behaviour as the only kind of attention they can receive, and so act in a way that invites abuse.
- They exhibit sudden changes in behaviour and show signs of emotional disturbance. They may unexplainably begin to cry easily and seem excessively nervous.
- They may either become hyperaggressive, disrupting and demanding — or unnaturally withdrawn.

- At present there is no penalty for failure to report incidents of child abuse or neglect, but the Act may soon be amended to provide sanctions to those who have knowledge of abuse or neglect and choose not to report.

Protection for an Informant

A person can give the necessary information by making an anonymous phone call, although the officer would prefer to see the informant. If an informant gives his/her name, Saskatchewan Social Services will try to protect his/her identity, but the informant may later be called as a witness in court. In this case, a witness can be forced to go to court and testify.

If a report is false, the informant cannot be sued or charged with any offence unless the report was made maliciously (with the intention of harming the parent rather than protecting the child).

The Investigation

Once a report has been made, an officer will investigate the complaint. If the officer thinks a child is in need of protection he/she may:

1) have the child taken from the home and placed temporarily in a foster home or a child care institution, or

2) leave the child in the home and take whatever steps are necessary to make sure the child is safe.

The Hearing

If the child has been removed from the home or if the social worker thinks a child needs protection, a court hearing will take place to determine if the child needs protection. The judge must fix a time for the hearing within 30 days after the child has been taken into custody. Saskatchewan Social Services must then deliver to the parent a notice stating the time and place of the hearing.

All hearings are held in private, only those people directly involved in the case are allowed in the court room. Both Saskatchewan Social Services and the parents have a right to be represented by a lawyer. If the parents cannot afford a lawyer, Legal Aid services may be used. The judge will look at all evidence to determine if the child is in need of protection. It is not necessary to establish that one particular person is harming the child. If the judge decides the child is in need of protection he/she may make one of the following orders:

1) The child may be returned to his/her parents, provided the parents follow the conditions set out in the order. For example, if a parent abuses or neglects a child when he/she is drinking, he/she may be ordered to get professional help to cope with his/her drinking problem. If the child is returned to the parents, a social worker may be required to supervise the child regularly for up to one year. This is to make sure that the child is secure.

(2) The child may be "committed to the Minister." This means that the child is removed from the home and placed in a foster home or a child care institution and the Minister of Social Services acquires legal custody of the child. Committal may be permanent or for a specified period up to one year. If it is for a specified period, the child will be returned to the parents after this time, or another hearing may be held to determine if the child is in need of further protection.

When the Minister acquires custody of the child, the parents have no legal rights or duties with regard to the child. If the committal is temporary, the parents are encouraged to visit their child. However, if the committal is permanent ongoing contact is at the discretion of social services.

Parent Aides and Parents Anonymous provide help to families where abuse or neglect is taking place. Home visits are arranged to help the abusive parents and permit the child to stay with its own parents. Very few abused or neglected children are taken away from their parents permanently because services such as Parent Aides and Parents Anonymous which are funded through *The Family Services Act* are provided.

Appeals

If a parent is unhappy with the decision of a judge he/she can appeal the decision to the Court of Queen's Bench. The court has the power to alter the order made by the Provincial Court judge.

Sexual Harassment in the Workplace

What is Sexual Harassment?

Sexual harassment consists of any unwanted sexual advances, requests for sexual favours or other verbal or physical contact of a sexual nature which threatens job security, conditions of work or advancement opportunity. Sexual harassment can be found in many forms; it can be physical assault, demands for sexual favours, unnecessary and unwanted physical contact, or suggestions, remarks or jokes directed at a woman because of her sex. The following are examples of sexual harassment.

1) a person in authority makes it clear that the employee must provide sexual favours to keep her job or to get a promotion;
2) an employee is dismissed, demoted or denied a promotion as a result of refusing sexual favours; or
3) physical assaults, such as the deliberate touching, grabbing or pushing, or any unwanted verbal or physical conduct of a sexual nature which becomes a condition of employment.

What Protection is Available for Victims of Sexual Harassment?

The law provides protection for women who have been sexually harassed. There are a number of Board of Inquiry decisions handed down in Canada to date which confirm that sexual harassment is a form of sex discrimination, and is prohibited by Human Rights legislation. One of the following procedures may provide help for victims of sexual harassment.

1) **The Saskatchewan Human Rights Commission.**

   The Saskatchewan Human Rights Code prohibits discrimination on the basis of sex in such areas as employment, education, housing and public accommodation and services. Sexual harassment is sex discrimination. A victim of sexual harassment may file a complaint with the Saskatchewan Human Rights Commission on the basis of sex in any of the above areas. The complaint will be investigated, and, if it is established that the Code has been violated, an investigator will try to settle the complaint. If no settlement is reached, the Commission may direct the Attorney-General to appoint an independent Board of Inquiry to hear the complaint. When the Board makes its decision, it can make any order it considers necessary to provide full compensation. (For further information on the operation of the Human Rights Code, see page 4.)

Complaints may be filed before the Human Rights Commission free of charge.

2) **Criminal Courts.** If an employer has made physical advances towards an employee, he/she may have committed the criminal offence of indecent assault. The Saskatchewan Human Rights Commission can tell any employee if the harassment has been of the type for the basis of a criminal charge. If a criminal offence has been committed, the employee can contact the police to press charges.
3) **Unions.** If an employee belongs to a union, she should report any sexual harassment to her union representative. Often, collective bargaining agreements have clauses which prohibit or can provide protection for victims of sexual harassment. If one of these clauses has been violated, grievance proceedings can be initiated. The union will meet with management to demand that the violation be corrected and that the employee be compensated for any loss she has suffered as a result of the harassment.

Preventing Sexual Harassment

Sometimes incidents of sexual harassment can be stopped before they result in dismissal or demotion. The first time an employee is sexually harassed, she should reject the advances firmly and make it clear that she will not be intimidated. If the harassment continues, she should contact her union representative or the Human Rights Commission **before** she leaves her job.

To make her complaint more convincing, the employee should keep a record of all incidents of sexual harassment. The record should show a description of the type of harassment, the time, date, place and the person involved. If anyone witnessed the incident, he/she should sign the record. It is also a good idea to check with other employees to determine if they have been harassed. If they have, these incidents should be recorded also.

Responsibility of Employers

The case law on sexual harassment is quite clear on this point. Employers are responsible for their own acts and those of their agents and supervisory personnel. If the harasser is a fellow employee, the employer may be held responsible for the discriminatory act, depending on what action the employer takes to prevent or stop the harassment after it is reported.

Sexual Assault

The word rape has now been removed from the Criminal Code and replaced with assault. The offense of sexual assault to date is not defined in the Criminal Code. This could present problems and confusion in early court proceedings.

Under the new legislation passed in the fall of 1982 and to be proclaimed in January 1983, sexual assult becomes a three-tiered offence.

1) Everyone who commits a sexual assault is guilty of an indictable offence and can be imprisoned for a maximum of ten years or punished by summary conviction (maximum six month sentence or a fine decided by a judge).

2) Everyone who commits sexual assault with a weapon; threatens a third party, e.g. a person's child; causes or threatens to cause bodily harm is guilty of an indictable offence and is liable to imprisonment for fourteen years.

3) Everyone who commits aggravated sexual assault by wounding, maiming, disfuiguring or endangering the life of the complainant is guilty of an indictable offence and is liable to imprisonment for life.

To prove the charge of sexual assault, the prosecution must establish a lack of consent and the identity of the subject.

In the new legislation, spouses can be charged with sexual assault. Prior to this, husbands could not be charged with raping their wives.

Penalties

The maximum penalty for aggravated sexual assault is life imprisonment. In the past, sentences for rape have been much lower than the maximum. Prior to the new legislation a first offender usually received a sentence of two years less a day if they were convicted at all. The maximum penalty for sexual assault is ten years and with a weapon the maximum penalty is fourteen years.

Prosecution

The following is an outline of the legal steps a person must take to bring the various charges of sexual assault against an offender.

The Initial Police Report

If a woman intends to report the matter to the police, she should do so as soon as possible. If the woman does not want to go to the police, she may still be able to make an informal report to the police. Some police stations will accept a report made by an unidentified victim or a third party. This information helps the police identify repeating offenders or suspects.

When a woman contacts the police, an investigator will visit her immediately. In making an initial report, the officer will want general information about the incident and the place where the sexual assault occurred, so that the police may obtain evidence (e.g., fingerprints, weapons or stains) about the identity of the offender. The police will also note the victim's behaviour and emotional state.

It is very important not to change clothing or shower or bathe. Important evidence can be obtained from the victim's clothes and physical state immediately after the attack.

To initiate criminal proceedings, an information must be laid against the attacker. Almost all informations are laid by the police. If the police think that there is not enough evidence to sustain charges of sexual assault, they may lay an information which charges the attacker with a lesser offence or they may not lay a charge at all.

Medical Examination

Once the initial report has been obtained, the police will usually take the victim to the hospital. The medical examination has two functions: the woman's injuries can be properly treated and evidence of violent assault can be obtained. The doctor will check for any bruises or cuts. The physician must also give an internal gynecological exam. This examination is necessary to determine if there is any damage to the external genitals, the vagina and the cervix. A doctor will also take samples from the vagina to check for the presence of sperm or semen.

The hospital staff will note the condition of the woman's clothing and place each piece into a separate bag and label it. The clothes will later be tested for semen and blood stains. Because the woman's clothing will be kept for evidence, she should bring a change of clothing to the hospital.

The hospital staff may conduct a few other tests to help identify the offender. If the woman has scratched her assaulter, scrapings from underneath her fingernails will be taken.

A woman may also undergo a pubic hair examination. This involves combing the pubic area to obtain hairs from the offender.

During the examination, the doctor or nurse will also take blood samples to check for gonorrhea or syphilis. However, the presence of venereal disease will not show up for some time following intercourse. Therefore, a woman should have the following tests conducted after the hospital examination:

1) **Gonorrhea.** Since it takes about 10 days for gonorrhea to show up on any tests, a woman should be tested about two weeks after the incident. Two negative tests are necessary, so a woman should have a second test one week after the first test was taken. A woman should be tested in all areas where she came into sexual contact with the rapist.

2) **Syphilis.** A woman should have a blood test for syphilis four to six weeks after the incident. She should also have a follow-up test three months later since 25 percent of people tested have false negative results.

3) **Pregnancy.** If a woman's menstrual period is late, a pregnancy test should be taken six weeks after the first day of the last period. If the woman is pregnant the option of abortion is available.

Investigation

Shortly after the initial report and the medical examination, the victim will have an interview with the investigating officer. The detective will ask for minute details of the sexual assault and what happened before and after the attack. The officer will also ask about force and threats the assailant used and anything the victim did to resist. If the victim knows the offender, she will be questioned about their relationship. If he was a stranger, she will be asked to describe him. At this time (or during the medical examination), the victim might also have photographs taken. These pictures will record bruises which may disappear by the time the trial is held.

If a woman finds the questions irrelevant or humiliating, she should ask the detective to tell her the purpose behind the questions. In some places, a woman is asked to take a lie detector test; however, the results of the test cannot be used as evidence and the woman has a right to refuse to take this test.

After the interview, the officers will write up a summary of the statement and ask the woman to sign it or they will ask her to prepare her own statement. A woman should also write an account of the assault for her own use, and if she remembers more details she should add these to her account. Following the interview, the woman may be asked to look at mug shots or identify a suspect in a lineup.

Arrest and Release of a Suspect

After a suspect is arrested, he will probably be released on bail or on a personal recognizance. The release will probably be under the condition that the suspect does not contact the victim. If he does so, the woman should report it to the police. The judge then has the right to increase the suspect's bail or have him returned to jail.

Interview with the Prosecuting Attorney

The Crown (the prosecuting attorney) will try to prove that the assault actually did take place. The Crown has the responsibility for prosecuting all offenders and the sexual assault victim in this case is the primary witness. A prosecutor is assigned to the victim; she does not hire her own lawyer to represent her.

The prosecuting attorney will ask the woman to describe the incident. He/she will then decide whether or not to take the accused to trial. If the attorney decides not to proceed against the accused, the woman should ask for the reason for his/her decision.

Preliminary Inquiry

A preliminary hearing will usually be held between six to nine months after the assault. The hearing will take place in an open court before a judge. If the victim is under fourteen years of age the prosecuting attorney can request the hearing be closed to the public. The accused and his lawyer will be present. The victim is usually asked to describe the incident and the defence lawyer has a right to cross-examine the victim and all other witnesses. The judge will then decide if there is enough evidence to send the accused to trial.

Trial

The trial will usually take place six to nine months after the hearing. The procedure for a sexual assault trial is the same as for any other criminal offence; however, there are some defences and rules of evidence which are unique to sexual assault trials.

The defence lawyer can use two methods to obtain an acquittal. He/she can show that the accused has not been positively identified as the man who committed the sexual assault or that the victim consented. The defence of consent is one that is most commonly used. The defence attorney will try to show that the woman, by her behaviour or appearance, encouraged sexual intercourse and then "cried rape." A defence lawyer will try to imply that such behaviour as hitchhiking, going to a bar alone or wearing no underclothing is an invitation to sexual assault.

In some situations, a woman's previous sexual conduct may be examined. A witness can always be questioned about previous sexual relations with the accused. If a witness is asked a question she considers offensive, she should pause before answering to give the Crown a chance to object. If the Crown doesn't do so, she may ask the judge if she is obliged to answer the question. If the judge says she must answer, she has no legal right to refuse.

If the defence lawyer wishes to introduce evidence of the victim's sexual relations with people other than the accused, the prosecution must be given reasonable notice in writing. The judge will hear the evidence in private and determine if it is necessary to justly decide the case. If the judge thinks the evidence is necessary, the woman will be examined in an open court and will be compelled to answer the questions asked by the defence lawyer.

By introducing such evidence, the defence will try to show that the victim, having consented to sexual behaviour in the past, was the kind of woman who would consent in this instance.

Another block to obtaining a conviction is that corrobative evidence (independent evidence other than that of the victim's testimony which will support her statement) is usually necessary. Although, according to the Criminal Code, corroborative evidence is not required to sustain a conviction, in practice, it is usually necessary to prove that the accused is guilty beyond a reasonable doubt.

In addition, if the victim cannot testify under oath, her story must be corroborated to sustain a conviction. If the victim is a child who is too young to understand the nature of the witness' oath, she can only give unsworn evidence. Whether or not a child is old enough to give sworn evidence depends on the facts of the particular case.

Making the Decision

Sexual assault is always a traumatic experience. Sometimes, the process of pressing a sexual assault charge is almost as painful. Suspicious police officers, Crown attorneys and defence lawyers can often make the woman feel that her "loose" behaviour invited the sexual assault. A woman should try to remember that this idea is based on widespread misconceptions about offenders. Sexual assault is an act of violence perpetrated on almost any female; it has nothing to do with the victim's supposedly seductive behaviour.

If a woman decides to report the incident to the police or to take the matter to court, she needs strong emotional support from family, friends or counsellers. In Saskatchewan, there are several rape crisis/sexual assault centres. These centres will put victims in touch with sympathetic women who can accompany her to the hospital or the police.

The rape crisis/sexual assault centres are listed below:

Regina
Regina Women's Community Centre and
Sexual Assault Line
219-1808 Smith Street
REGINA S4P 2N3
(Phone 522-2777 or 352-7688)

24-Hour Rape Crisis Line
(Phone 352-0434)

Saskatoon
Saskatoon Rape Crisis/Sexual Assault and
Information Centre
D-249-2nd Avenue South
SASKATOON S7K 1K8
(Phone 244-2444)

Prince Albert
Prince Albert Sexual Assault Centre
66A-13th Street West
PRINCE ALBERT S6V 3E8
(Phone 922-7273)

North Battleford
North Battleford Rape Crisis Line
Box 1044
NORTH BATTLEFORD S9A 0V0
(Phone 446-4444)

Office of the Ombudsman — Saskatchewan

What is the Role of the Ombudsman?

The Saskatchewan Ombudsman was established pursuant to legislation enacted in 1972. The Ombudsman is charged with the duty of investigating citizen complaints against the administration of the provincial government departments and agencies, after the usual means of appeal have been taken. The Ombudsman possesses broad powers of investigation including the right to summon witnesses and to take evidence under oath. The Ombudsman's jurisdiction extends to all agencies of the provincial government and as successive Saskatchewan governments have established agencies in traditional private sector areas such as utilities and resources, the Saskatchewan Ombudsman has a very broad range of contact with the public.

The Ombudsman is appointed for a five-year term and as an officer of the legislature is appointed by resolution of the Legislative Assembly and subsequent Cabinet Order. The independence of the Saskatchewan Ombudsman meets all the international tests including an annual obligation to report directly to the legislature of the Province of Saskatchewan. The Ombudsman's role is a recommending one and regularly involves informing the public as to general problems with particular government programs and policies.

Who is Eligible to Make a Complaint?

Any person who was a Saskatchewan resident on or before the date of the event that gave rise to the complaint.

How can the Ombudsman be Contacted?

By telephone or letter or personal visit to the Office of the Ombudsman.

What Kinds of Complaints can be Made?

Complaints against departments and agencies of the provincial government, including provincial crown corporations.

What Powers does the Ombudsman Have?

To investigate, substantiate and make recommendations to inform the public.

Office of the Ombudsman
2310 Scarth Street
Regina, Saskatchewan
S4P 3V7 (565-6211)

Office of the Ombudsman
206 - 4th Avenue South
Saskatoon, Saskatchewan
S7K 1M9 (toll free 112 or 1-800-772-9787)

Resources

The following agencies can provide information and assistance:

Freedom from Discrimination

The Saskatchewan Human Rights Commission

Saskatoon Office
8th Floor
Canterbury Towers
224-4th Avenue South
SASKATOON S7H 0V7
(Phone 664-5952)

Prince Albert Office
49-12th Street East
PRINCE ALBERT S6V 1B5
(Phone 764-6846)

Regina Office
1819 Cornwall Street
REGINA S4P 2K4
(Phone 565-2530)

Change of Name

Vital Statistics Division
Saskatchewan Health
3475 Albert Street
REGINA S4S 6X6
(Phone 565-3098)

Trade Unions

Industrial Relations Branch
Saskatchewan Labour
1914 Hamilton Street
REGINA S4P 4V4
(Phone 565-2402)

The Labour Standards Act

Apprenticeship and Standards Division Saskatchewan Labour

Regina Office
1914 Hamilton Street
REGINA S4P 4V4
(Phone 565-2438)

Saskatoon Office
3130-8th Street East
SASKATOON S7H 0W2
(Phone 664-5042)

Moose Jaw Office
110 Ominica Street West
MOOSE JAW S6H 6V2
(Phone 693-6101)

Yorkton Office
Provincial Office Building
72 Smith Street East
YORKTON S3N 2Y4
(Phone 783-9725)

Prince Albert Office
196-9th Street East
PRINCE ALBERT S6V 0X5
(Phone 764-5131)

North Battleford Office
10109-11th Avenue
NORTH BATTLEFORD S9A 2S3
(Phone 445-6348)

Weyburn Office
110 Souris Avenue
WEYBURN S4H 2Z9
(Phone 842-4193)

Swift Current Office
350 Cheadle Street West
SWIFT CURRENT S9H 4G3
(Phone 773-3392)

Complaints regarding equal pay for similar work, maternity, paternity and adoption leave provisions should be referred to:

The Women's Division
Saskatchewan Labour
1914 Hamilton Street
REGINA S4P 4V4
(Phone 565-2453 or 565-2468)

Sexual Harassment in the Workplace

The Saskatchewan Human Rights Commission

Saskatoon Office
8th Floor
Canterbury Towers
224-4th Avenue South
SASKATOON S7H 0V7
(Phone 664-5952)

Prince Albert Office
49-12th Street East
PRINCE ALBERT S6V 1B5
(Phone 764-6846)

Regina Office
1819 Cornwall Street
REGINA S4P 2K4
(Phone 565-2530)

Workers' Compensation

Workers' Compensation Board
1840 Lorne Street
REGINA S4P 2L8
(Phone 565-4370)

Workers' Advocate
1914 Hamilton Street
REGINA S4P 4V4
(Phone 565-2456)

Unemployment Insurance

Canada Employment Centres

BEAUVAL
Box 100
(Phone 288-2130)

CREIGHTON
Box 520
(Phone 687-3624)

ESTEVAN
1302-3rd Street
(Phone 634-3624)

HUMBOLDT
Box 2198
(Phone 682-5414)

LA RONGE
Box 324
(Phone 425-2229)

LLOYDMINSTER
4618-1st Street East
(Phone 1-403-825-6291)

MEADOW LAKE
101-1st Street East
(Phone 236-5668)

MELFORT
104 McLeod Street East
(Phone 752-5731)

MELVILLE
317 Main Street
(Phone 728-5718)

MOOSE JAW
61 Ross Street West
(Phone 693-0555)

NORTH BATTLEFORD
1254-100th Street
(Phone 445-9481)

PRINCE ALBERT
10-13th Street East
(Phone 763-2611)

REGINA
2045 Broad Street
(Phone 359-6130)

SASKATOON
101-22nd Street East
(Phone 665-4515)

SWIFT CURRENT
50 Herbert Street East
(Phone 773-8324)

WEYBURN
210 Souris Avenue
(Phone 842-5424)

YORKTON
18 Broadway Street East
(Phone 783-9421)

URANIUM CITY
Box 398
(Phone 498-3100)

Income Security Offices

Health and Welfare Canada Canada Pension Plan, Family Allowances and Old Age Security

Regina Office
Federal Government Building
1975 Scarth Street
REGINA S4P 3K4
(Phone 359-5631)

Assiniboia Office
Town Hall
105-3rd Avenue West
ASSINIBOIA S0H 0B0
(Phone 642-4424)

Broadview Office
Town Office
Main Street
BROADVIEW S0G 0K0
(Phone 696-2533)

Estevan Office
Federal Building
1302-3rd Street
ESTEVAN S4A 0S2
(Phone 634-2454)

Melville Office
City Hall
430 Main Street
MELVILLE S0A 2P0
(Phone 728-4177)

Moose Jaw Office
Room 225
Federal Building
61 Ross Street West
MOOSE JAW S6H 2M2
(Phone 692-2893)

Shaunavon Office
Court House
401-3rd Street West
SHAUNAVON S0N 2M0
(Phone 297-2605)

Swift Current Office
Federal Building
275 Central Avenue North
SWIFT CURRENT S9H 0L3
(Phone 773-5325)

Weyburn Office
Second Floor
Federal Building
161 3rd Street North East
WEYBURN S4H 0W3
(Phone 842-3712)

Yorkton Office
Broadway Park Plaza
486 Broadway West
YORKTON S3N 0P3
(Phone 783-3135)

Saskatoon Office
201 Financial Building
230 22nd Street East
SASKATOON S7K 0E9
(Phone 665-4222)

Humboldt Office
Town Municipal Office
715 Main Street
HUMBOLDT S0K 2A0
(Phone 682-3921)

Lloydminster Office
Canada Manpower Centre
4618 49th Avenue
LLOYDMINSTER S9V 0T2
(Phone 825-6291)

Melfort Office
302 Main Street
MELFORT S0E 1A0
(Phone 752-9187)

North Battleford Office
Second Floor
Federal Building
1254-100th Street
NORTH BATTLEFORD S9A 0V7
(Phone 445-9481)

Prince Albert Office
94 15th Street East
PRINCE ALBERT S6V 1E8
(Phone 764-7400)

Rosetown Office
Community Hall
ROSETOWN S0L 2V0
(Phone 882-9686)

Private Pension Plans

Pension Benefits Division
Saskatchewan Labour
1914 Hamilton Street
REGINA S4P 4V4
(Phone 565-2458)

Landlord-Tenant Relations

Office of the Rentalsman

Regina Office
1871 Smith Street
REGINA S4P 3V7
(Phone 565-2699)

Saskatoon Office
8th Floor
Canterbury Towers
224-4th Avenue South
SASKATOON S7K 5M5
(Phone 664-5680)

Prince Albert Office
800 Central Avenue
PRINCE ALBERT S6V 6Z2
(Phone 922-2213)

Rent Appeal Commission
122-3rd Avenue North
SASKATOON S7K 2H6
(Phone 664-6120)

Provincial Mediation Board
1871 Smith Street
REGINA S4P 3V7
(Phone 565-3022)

Consumer Protection Laws

Licensing and Investigation Branch
Saskatchewan Consumer and Commercial Affairs

Regina Office
1871 Smith Street
REGINA S4P 3V7
(Phone 565-5550)

Saskatoon Office
122-3rd Avenue North
SASKATOON S7K 2H6
(Phone 664-5725)

Battered Women

Transition House
REGINA
(Phone 545-2292)

Regina Native Women's Residence and Resource Centre
REGINA
(Phone 545-2062)

Interval House
SASKATOON
(Phone 244-0185)

Transition House
Box 1866
MOOSE JAW
(Phone 693-6511)

Battlefords Interval House
NORTH BATTLEFORD
(Phone 445-2742)

Interval House Project
PRINCE ALBERT
(Phone 922-2100)

Interval House
Box 1523
LLOYDMINSTER

Sexual Assault

Regina Women's Community Centre and Sexual Assault Line
219-1808 Smith Street
REGINA S4P 3N3
(Phone 522-2777 or 352-7688)

24-Hour Rape Crisis Line
REGINA
(Phone 352-0434)

Saskatoon Rape Crisis Line/Sexual Assault and Information Centre
D249-2nd Avenue South
SASKATOON S7K 1K8
(Phone 244-2224)

Prince Albert Sexual Assault Centre
66A-13th Street West
PRINCE ALBERT S6V 3E8
(Phone 922-7273)

North Battleford Rape Crisis Line
Box 1044
NORTH BATTLEFORD S9A 0V0
(Phone 446-4444)

Legal Rights for Native Women

Department of Indian Affairs and Northern Development

Director General
2332-11th Avenue
REGINA S4P 2G7
(Phone 569-5948)

District Manager
671-109th Street
NORTH BATTLEFORD S9A 2S8
(Phone 445-9406)

District Manager
10-13th Street East
PRINCE ALBERT S6V 1C6
(Phone 764-5224)

District Manager
44-1st Avenue
YORKTON S3N 0P3
(Phone 783-9761)

District Manager
201-101-22nd Street East
SASKATOON S7K 0E1
(Phone 665-4768)

District Manager
Touchwood-File Hills
FORT QU'APPELLE S0G 1S0
(Phone 332-6543)

District Manager
Box 280
MEADOW LAKE S0M 1V0
(Phone 236-4472)

Superintendent
Shellbrook Indian Agency
Box 790
SHELLBROOK S0J 2E0
(Phone 747-2627)

Legal Aid

Legal services are available free of charge for people in financial need. Legal Aid clinics are located at:

Moose Jaw and Community Legal Services
113-110 Ominica Street West
MOOSE JAW S6H 6V2
(Phone 693-6422)

Regina Community Legal Services
2331-11th Avenue
REGINA S4P 0K2
(Phone 522-3641)

The Valley Legal Assistance Clinic Society
(Saskatoon Rural)
203 Avenue Building
220-3rd Avenue South
SASKATOON S7K 1L9
(Phone 244-0947)

The Saskatoon Legal Assistance Clinic Society
210-728 Spadina Crescent East
SASKATOON S7K 4H7
(Phone 653-5160)

The South West Community Legal Services
Society
Box 817
150-1st Avenue NW
SWIFT CURRENT S9H 3W8
(Phone 773-2904)

The Pasqua Community Legal Services Society
Box 2680
108 Burrows West
MELFORT S0E 1A0
(Phone 752-5717)

The Qu'Appelle Region Community Legal
Services Society
3-281 Albert Street
REGINA S4R 2N5
(Phone 545-8700)

The South East Saskatchewan Legal Services
Society
Box 326
1314B-3rd Street
ESTEVAN S4A 2A4
(Phone 634-6449)

The Meadow Lake and District Legal Services
Society
220 Centre Street
MEADOW LAKE S0M 1V0
(Phone 236-4464)

The Prince Albert and District Community Legal
Services Society
100-11th Street East
PRINCE ALBERT S6V 1A1
(Phone 764-6823)

The Battlefords and Area Legal Services
Society
1192-103rd Street
NORTH BATTLEFORD S9A 1K2
(Phone 445-6187)

The Parklands Legal Assistance Society
Box 69
8 Myrtle Avenue
YORKTON S3N 2V6
(Phone 783-6533)

Weyburn Legal Aid
Box 517
7-3rd Street NE
WEYBURN S4H 2K3
(Phone 842-5437)

Yetha Ayisiniwuk Legal Services Society
Box 510
LA RONGE S0J 1L0
(Phone 425-2130)

Welfare Rights

Saskatoon Self-Help Council
914A-20th Street West
SASKATOON S7M 0Y4
(Phone 665-6722)

Welfare Rights Centre
1843 Broad Street
REGINA S4P 1X8
(Phone 527-3521)

Saskatchewan Ombudsman

2310 Scarth Street
REGINA S4P 3V7
(Phone 565-6211)

206-4th Avenue South
SASKATOON S7K 1M9
(Phone 664-5500)

Legal Information

Public Legal Education Association of Saskatchewan
400-241 2nd Avenue South
SASKATOON S7K 1K8
(Phone 653-1868)

Elizabeth Fry Society
241-2nd Avenue South
SASKATOON S7K 1K8
(Phone 934-4606)

John Howard Society Regina Council
2228 Osler Street
REGINA S4P 1W8
(Phone 527-6657)

John Howard Society Saskatoon Council
241-2nd Avenue South
SASKATOON S7K 1K8
(Phone 244-8347)

John Howard Society Prince Albert Council
432-13th Street West
PRINCE ALBERT S6V 3G5
(Phone 764-6439)

John Howard Society Moose Jaw Council
72 High Street East
MOOSE JAW S6H 0B8
(Phone 693-0777)

Important: This booklet is a simplified statement of general principles of law. It is **not** intended to be a substitute for legal advice. The basic principles stated here will **not** apply to every situation. Generally, what is provided in this publication is **one** interpretation of legal principles. There may be a variety of interpretations of the statutes and cases discussed in this booklet. Certain factors in your particular case or a different interpretation of the law could alter the outcome of a legal decision.

If you have a specific legal problem, consult one of the agencies listed in this publication. If there is no agency which deals with your particular problem, seek advice from a lawyer.

Remember, also, that the law changes almost every day. Changes to the legislation and subsequent judicial decisions could affect the rights and obligations discussed in this publication. A lawyer or the appropriate government agency can tell you if your legal rights have changed since the publication of this booklet.

December 1981

Women's Services Branch
Saskatchewan Advanced Education and Manpower
1855 Victoria Avenue
Regina, S4P 3V5

(306) 565-2452

This is the Law

A Legal Guide for Women

SASK. LEGISLATIVE LIBRARY
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REGINA

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Introduction

Many people have, at one time, been taken advantage of by other people. If a person has been cheated, been discriminated against or been injured, the law can often give compensation and protection. However, the law can only provide help if people know their rights and are willing to assert them.

This booklet is designed to give women a general idea of what their legal rights are and how they can be enforced. However, it is **not** intended to be a substitute for advice from a lawyer. The booklet simply gives an overview of the law in certain areas and explains what is likely to happen if a person becomes involved in legal proceedings. Often people are reluctant to use official procedures to assert their rights. This is understandable. The use of legal procedures is often time consuming and sometimes expensive; it can also create hostility among co-workers, friends or relatives. But if women do not protest when they have been injured, the abuses will never be corrected.

What is the Law?

The law is made up of thousands of pieces of legislation which have been drafted and put into force by the federal and provincial legislatures. These pieces of legislation are called statute law. Another kind of law is case law or common law. The common law is comprised of all the important decisions made by judges and court cases. When a judge makes a ruling in a case, he/she is setting a precedent. If a similar dispute comes up again in courts, the judge is bound to follow the precedent set by the first judge. In theory, a precedent may only be over-ruled by a judge of a higher court or by the legislature. In practice, judges often distinguish one case from an earlier one so that they will not be bound by a previous decision.

How is the Law Enforced?

The law is enforced by the courts and by various administrative tribunals such as The Saskatchewan Human Rights Commission. They will hear both sides of a dispute and decide if a particular law applies.

Saskatchewan, like other provinces, has several courts. Each court will deal with a particular kind of dispute. Generally, the higher courts deal with the more serious cases. The court structure in Saskatchewan is as follows:

Provincial Court of Saskatchewan — this court deals with:

1) all minor criminal offences, as well as some more serious criminal offences; and

2) minor civil matters, pursuant to *The Small Claims Enforcement Act*. This court will only hear disputes where the amount of money involved is $1,000 or less. The procedure with regard to civil matters is quite informal, the parties do not have to be represented by a lawyer.

Civil matters are disputes involving two private citizens or companies. Criminal offences involve the Crown pressing charges against an accused.

Juvenile Court — this court deals with cases involving children, such as juvenile delinquency and complaints of child abuse, brought under *The Family Services Act*.

Unified Family Court — Unified Family Court is an experimental project which is operating only in Saskatoon. This court hears all family disputes such as divorce and child custody cases.

Surrogate Court — this court hears all matters dealing with the wills and the estates of deceased persons.

District Court — District Court hears civil and criminal cases. This court will deal with all civil disputes where the amount of money involved is less than $10,000. It will also handle criminal trials which are conducted without a jury.

Court of Queen's Bench — this court is the superior trial court of the province. It will hear all civil and criminal cases which are not dealt with by other courts. Criminal cases heard in Queen's Bench Court will be tried by a judge alone or by a judge and jury.

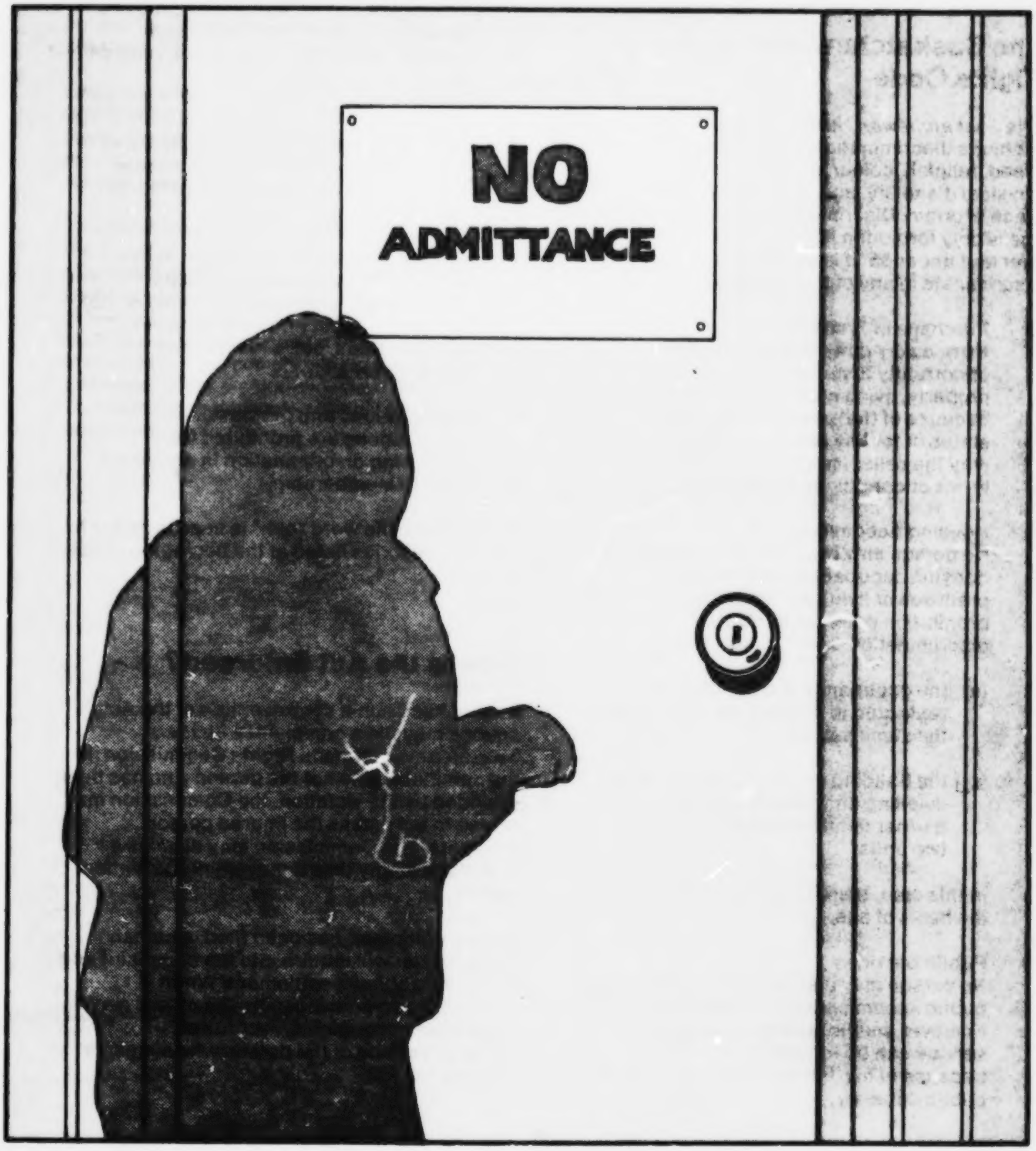
In the spring of 1980, legislation was passed combining District Court and Queen's Bench Court.

Court of Appeal of Saskatchewan — this is the highest court in Saskatchewan. It hears appeals from Provincial Court, District Court and Queen's Bench Court.

The Federal Court of Canada — this court will periodically sit in Saskatchewan. It will handle disputes relating to federal agencies and legislation.

The Supreme Court of Canada — this court is the highest court in Canada. It will hear appeals from all provincial Courts of Appeal and the Federal Court of Appeal. The Supreme Court has the power to decide which cases it will hear. It will usually only handle cases of national importance or cases which deal with new points of law.

Freedom from Discrimination


NO
ADMITTANCE

Freedom from Discrimination

Many times, women have been refused employment, denied housing accommodations or deprived of educational opportunities because of their sex, marital status or race. Such activity is unlawful and women have legal recourse against those who discriminate against them.

The Saskatchewan Human Rights Code

The Saskatchewan Human Rights Code prohibits discrimination on the grounds of race, creed, religion, colour, sex, marital status, physical disability, age, nationality, ancestry or place of origin. Discrimination on the basis of age is only forbidden if the injured party is 18 or over and under 65. It is an offence to discriminate in any of the following areas:

1) Purchase of Property
No one may deny to any person the opportunity to purchase commercial property, living accommodation or land because of that person's sex, marital status or for any reason listed above. Nor may the seller impose any discriminatory terms or conditions on the sale.

2) Housing Accommodation
No person may practice discrimination in denying occupancy of commerical premises or living accommodations. This prohibition does not apply to discrimination on the basis of sex if:

   (a) the occupancy in a building is restricted to individuals who are all of the same sex; or

   (b) the building is composed of only two dwelling units and the owner or his/her family resides in one of the two units.

   In this area, there is no discrimination on the basis of age.

3) Public Services
No person may discriminate in providing public accommodation or services. However, public accommodation or service can be refused to any person because of his/her sex on the ground of public decency.

4) Education
Every person has the right to enroll in any school, college or university without discrimination. However, a school may restrict enrolment where it teaches only persons of a particular sex or religion or where it instructs only the physically disabled. In this area, there is no prohibition against discrimination on the basis of age.

5) Publications
No person shall publish or display any message which restricts the rights of a person or is offensive to a person because of his/her race, creed, religion, etc.

6) Employment
No employer shall refuse to employ, or discharge, or otherwise discriminate against any person because of his/her race, creed, etc.

   An employer is also forbidden to use advertisements which tend to be discriminatory. Nor can an employer ask questions about an applicant's sex, marital status, etc. when he/she is applying for a job.

   Trade unions and professional associations are prohibited from practising discrimination in denying a right to membership.

Note: Where the word "etc." is used, it refers to the 11 categories listed at the beginning of this section.

How is the Act Enforced?

If there has been a contravention of the Act, anyone may file a complaint with the Saskatchewan Human Rights Commission. If the complainant is not the person who has been offended by the violation, the Commission may refuse to act unless the injured person consents. The Commission may dismiss a complaint at any time if they think it is without merit.

Once a complaint has been filed, a human rights officer will inquire into the complaint and try to bring about a settlement. When conducting an investigation, the officer may inspect any documents, records or correspondence of the person who allegedly violated the Act.

Where no settlement is reached, a Board of Inquiry may be appointed to hear the complaint. The Commission, the complainant, the injured person and the accused will all appear before the Board. Each party has the right to present evidence and be represented by a lawyer.

When the Board has reached a decision, it can make any order it considers necessary to provide full compensation. For example, the Board can order that an employee be reinstated in a specific job; that the employee be paid wages or other benefits that he/she has been denied; that the offender reimburse the injured person for the extra cost of obtaining alternative goods or accommodations.

Every person who disregards an order of the Board or contravenes the Act is guilty of a summary conviction offence. The penalty is a maximum fine of $200 for an individual and $3,000 for a corporation.

The decision of the Board may be appealed to the Court of Queen's Bench within 30 days after the Board has reached its decision. However, the appeal must deal with a question of law, not a question of fact. What is or is not a question of law depends on the circumstances of the case. A person should consult a lawyer or a member of the Saskatchewan Human Rights Commission to determine if the decision can be appealed.

Women as Wives

Women as Wives

Marriage

What is the Legal Definition of Marriage?

According to the law, when a man and woman marry, they are making a contract. Under this contract, certain rights and obligations are imposed by law. Like other contracts, certain formalities must be observed before the agreement becomes legally binding and certain remedies are available if one person breaches the agreement.

What is Necessary to have a Legally Binding Marriage?

According to *The Marriage Act*, a man and woman must satisfy a number of requirements before they can be legally married. Some of these requirements deal with a person's capacity to marry; the other requirements deal with the procedures a couple must go through before they are legally married.

Capacity to Marry

Age

A woman under the age of 18 cannot marry without the consent of both her parents. However, the consent of one parent is sufficient in the following situations:

1) if the parents are divorced or legally separated, the consent of the parent with the custody is sufficient;

2) if one parent is dead or is living in a hospital for the mentally ill, the consent of the other parent is sufficient;

3) if the parents are not legally separated but are living apart, one parent may consent if:

    (a) the minor has been living with that parent for at least one year and,

    (b) the parents have not lived together for at least one year and,

    (c) the parent without custody hasn't given any money for support of the minor.

4) if both parents are dead, consent may be given by a lawful guardian or the person who has brought up or has supported the child; or

5) if the minor is a ward of the court under *The Family Services Act*, consent must be given by a director of Family Services.

A minor does not have to obtain parental consent if she has been married before and is now divorced or widowed.

If a minor cannot obtain consent from her parent or guardian, she may apply to a judge of Queen's Bench or District Court allowing the marriage to take place without parental consent.

Even if a minor has parental consent to marry, she cannot marry if she is under 16, unless a judge of the Provincial Court decides age should not be a prohibition.

Consanguinity and Affinity

If a man and woman are too closely related they cannot marry. For example, a woman cannot marry her:

grandfather,
grandmother's husband,
uncle,
husband's uncle,
father,
son,
grandson or husband's grandson, or
granddaughter's husband.

Before the couple is married they must sign a form called a statutory declaration which states that they are not too closely related. This form will be signed before the clergyman or official who performs the marriage.

Mental Capacity

A person must be capable of giving her consent to marry. This means that she must understand the nature of the ceremony and appreciate the responsibilities which marriage brings.

According to *The Marriage Act*, a person who is mentally retarded or mentally ill is not permitted to marry. However, in practice, many people who have been classified as mentally retarded do marry, since it is often difficult for an official to determine if a person is mentally incompetent.

No license will be issued or person married if such a person is under the influence of alcohol or drugs.

Previous Marriage

If a person has been married before, she cannot marry again unless the previous marriage has been ended by divorce, annulment or death of the other spouse. When a marriage is dissolved by divorce the parties to the marriage will first receive a "decree nisi," which is a provisional decree. Three months later they will receive a "decree absolute." This is a document stating that the marriage is officially at an end. A second marriage will not be legally valid unless it is performed after the decree absolute is in force.

Effect of Non-compliance

If a minor gets married when she is under 18 and does not have parental consent, the marriage will still probably be valid. The marriage is invalid only if the couple have not lived together after the marriage and have not had sexual intercourse before or after the marriage. But, a marriage will not be valid if the boy is younger than 14 and the girl is younger than 12.

If a marriage takes place between two people who are closely related, or with a person who is already married or with a person who is lacking the required mental capacity, the marriage is invalid. This means that the law does not recognize the existence of the marriage.

If the marriage is invalid the husband or wife can apply to the Court of Queen's Bench for a decree of annulment. This is an official statement by the court that the marriage does not exist. When the court grants an annulment, it can order the husband to pay alimony to the wife. (For further details regarding the payment of alimony see page 15.) The court may also distribute any property the couple owns between the husband and wife.

Formalities of the Marriage Ceremony

Who can Legally Perform a Marriage?

Any priest, minister or rabbi who is properly registered under *The Marriage Act* may perform a marriage.

The government also appoints marriage commissioners to perform marriage ceremonies. A person can contact a marriage commissioner by phoning the local court house. Unless the wedding takes place in northern Saskatchewan, the official who issues the license cannot perform the marriage.

Banns and Licenses

Before a couple can be married they must either obtain a license or have banns published. Licenses can be acquired from city or town clerks. Some stores also issue marriage licenses. If there is no clerk or store which issues licenses, they may be obtained from a judge of the Provincial Court in the area.

Before receiving a license, the parties must sign a document which states that they are capable of marrying, (that they are not too closely related, are of proper age, etc.). An official can refuse to issue the license if he/she thinks that the requirements of the Act have not been met.

Instead of applying for a license, a couple may have "banns" published. This means that the marriage will be publicly announced during a church service. The announcement must be made in a church where the man and woman regularly attend. The banns must be published on a Sunday at least five days before the marriage takes place.

The marriage ceremony must take place within three months after the license has been issued or the banns have been published.

Health Certificate

No official is allowed to perform a marriage ceremony if one party has a serious contagious disease (such as gonorrhoea or syphilis). Before an official can perform a marriage he/she must receive a certificate from a doctor stating that the man and woman have no serious contagious diseases. The doctor must examine the couple within 30 days before the marriage takes place.

If the couple marry in northern Saskatchewan, a certificate of health and a medical examination are not necessary. A clergyman or issuer of licenses in the area will know if an examination is necessary.

Procedure during the Ceremony

During the ceremony the couple must tell the official their ages and marital status. They must also state that there is no legal reason why they should not be married. The couple are also required to produce their health certificates. If one person has been married before, some officials require proof that the previous marriage has been legally dissolved or that the person's former spouse has died.

The ceremony must take place before two witnesses. After the ceremony, the official will give the couple a marriage certificate. He/she will also send the marriage license or a statutory certificate to the Vital Statistics Division. These documents are evidence that the marriage has taken place.

Effect of Non-compliance

A marriage is usually valid even if all the formalities of *The Marriage Act* have not been followed. However, if a person intentionally disregards the provisions of the Act, he/she may be fined.

Change of Name

Retaining Maiden Surname

In accordance with a long-standing custom, many women assume the surname of the husband at the time of marriage. However, if a woman who is a resident of Saskatchewan wishes to retain as her legal surname either her maiden surname or the surname which she had immediately prior to her marriage, she may do so under provisions of *The Change of Name Act.* The following points will be of interest to women considering this option:

1) A woman who wishes to use her maiden surname as her legal surname after her marriage must file a notice in the prescribed form with the Director of Vital Statistics in Regina. This notice should be filed as soon as possible following the marriage, since a woman who does not file this notice within six months after her marriage is deemed (considered by law) to have assumed the surname of her husband.

2) If a married woman has assumed the surname of her husband and later wishes to revert to her maiden surname, she may do so at any time during the marriage by filing notice in the prescribed form with the Director of Vital Statistics. Similarly, a woman who legally retained her maiden surname may later file notice with the Director of Vital Statistics that she has decided to assume her husband's surname.

3) The prescribed form and full information regarding these options may be obtained from:

   Vital Statistics Division
   Saskatchewan Health
   3475 Albert Street
   REGINA S4S 6X6
   (Phone 565-3092)

Adopting a New Surname

If a man and a woman wish to combine their surnames to form a hyphenated surname following their marriage, or if they wish to have other changes made in their names, they should apply for a legal change of name under *The Change of Name Act.* Full information and application forms relating to legal change of name are available from the Division of Vital Statistics in Regina.

A person applying for legal change of name in Saskatchewan must be:

a resident of Saskatchewan;
a Canadian citizen or other British subject; and
at least 18 years of age, or married, widowed or divorced.

The fee for a legal change of name in Saskatchewan is $10 plus payment of the costs for publication of the change of name in *The Saskatchewan Gazette.* These publication costs vary from $5 to $8 depending upon the number of persons listed in the application for the change of name. Following registration of a change of name, the applicant is provided with a change of name certificate which gives legal proof of the change of name which has taken place.

The Homesteads Act

While a man and woman are married, *The Homesteads Act* gives a woman some rights in her husband's property. *The Homesteads Act* prevents a husband from selling or mortgaging homestead property without the consent of his wife. The wife's consent must be obtained in a manner set out in the Act.

What is a Homestead?

A homestead includes the matrimonial home and the land it is situated on. If the matrimonial home is on a farm, the homestead will include the 160 acres surrounding the house. If the home is in the city, the homestead includes the home and the lot on which the house is situated.

It is not necessary for the husband to have absolute ownership of the land to fall within the Act. As long as the husband has some interest in the land, (as co-owner, as a beneficiary), *The Homesteads Act* will apply.

What are the Wife's Rights under *The Homesteads Act?*

While the Husband is Alive

The Act does not give the wife any right of ownership in the homestead. She has no right to live on the land or sell the land to another person. *The Homesteads Act* simply prevents the husband from dealing with the land (selling, mortgaging or renting the land) without his wife's consent. The Act has the following provisions to ensure that the wife is freely consenting to the transfer of the land.

1) Every document which transfers an interest in the homestead must be signed by the husband and wife. The wife must appear before a notary public, solicitor (who did not act for the husband in drawing up the document), justice of the peace, registrar of land titles or other official named in the Act. She will be examined as to whether she signed the transaction freely and knows of her rights under the Act.
2) The transfer must be accompanied by a declaration, signed by the wife, stating that she is relinquishing her rights. This declaration will usually be included in the document of transfer.
3) The transfer must be accompanied by a certificate from the examiner, stating that the wife understands her rights and relinquishes them freely.

When the Husband Dies

When a husband dies, the wife has the same rights against her husband's personal representative (the administrator of his will) as she would against her husband. However, the wife's rights to prevent a transfer of the land will exist only as long as the land is necessary for her maintenance and support. It appears from the Act that the wife also has the right to live on the land after her husband dies.

When is the Wife Denied her Rights under *The Homesteads Act?*

There are some situations in which a husband may dispense with his wife's consent. A wife's homestead rights will terminate in the following situations:

1) The husband and wife divorce. However, a wife's homestead rights will continue during marriage even if the couple are separated. (A common-law wife has no rights under *The Homesteads Act*.)

2) The wife is not living in Saskatchewan.

3) The building owned by the husband does not fall within the definition of a homestead. For example, if a husband owns a building in which his family has never lived , he would not need his wife's consent to sell it.

If the building is not a homestead, the wife lives outside of Saskatchewan or the owner has no wife, the owner must swear an affidavit to that effect. (An affidavit is a written statement which is confirmed by oath. It is made before a public official, such as a justice of the peace or a notary public, who has the authority to administer such oaths.)

A wife may also be denied her homestead rights because of her misconduct or mental illness. If a wife is living apart from her husband under circumstances disentitling her to alimony, her consent to a transfer of the homestead may not be necessary. If a wife is mentally ill, her consent may also be dispensed with. In these situations, the husband or an interested third party can apply to a judge of the Court of Queen's Bench for an order dispensing with the wife's signature.

How may a Wife Protect her Rights under the Act?

If a wife thinks her husband may try to dispose of the property without her consent, she should file a *caveat* in the Land Titles Office. A *caveat* is a document which will notify any prospective purchaser that the property is a homestead and subject to *The Homesteads Act*. Since most purchasers would not want to violate the provisions of *The Homesteads Act*, filing a *caveat* should adequately protect a wife's rights. However, it is not necessary to file a *caveat* to bring the Act into effect.

A woman would normally have a solicitor draft a *caveat* and file it. There is no filing charge, but there is a solicitor's fee for preparation of the document.

What is the Effect of Non-compliance with the Act?

If a husband transfers the homestead without his wife's consent, she may go to court to have the transfer set aside and the land returned to her husband.

According to the Act, to succeed in an action it must be proven that:

1) The plaintiff (the person who brings the action) is the owner's wife.

2) The land is a homestead.

3) The wife did not consent to the transfer. Some cases have held that lack of consent can only be established if none of the requirements of the Act have been met. That is, the transfer will only be set aside if the wife has not signed the declaration or transfer, has not been examined and there is no examiner's certificate. Other cases have said any violation of the Act will make the transfer void. Still other cases have held that, even though the wife did not consent to the transfer in writing, the transfer would not be set aside if the wife showed by her conduct that she approved of the transfer.

4) The buyer (or mortgagee or other person who dealt with the land) knew that the transfer was made in violation of the Act.

Separation

When a husband and wife are no longer living together, it does not mean that the marriage is legally at an end. The contract of marriage implies that each partner has certain rights and duties. According to the law, as long as a marriage exists, a husband has an obligation to support his wife. If a husband does not voluntarily contribute to the support of his wife, he can be forced to do so by the court. The payments that a husband makes to his wife when they are separated are called alimony or maintenance payments. A wife can apply for maintenance under *The Queen's Bench Act* or *The Deserted Wives and Children's Maintenance Act*, or she can arrange for payments to be made under a separation agreement.

The Deserted Wives' and Children's Maintenance Act (DWCMA)

Where a husband has failed to provide adequate support for his wife she may apply for a maintenance order for herself and her children under *The DWCMA*. A wife who wishes to obtain payment under this Act should contact a lawyer. The lawyer will draft a complaint stating that she has been "deserted" and will request that a maintenance order be made against her husband. The husband will be given a chance to appear in court and show why he should not be forced to pay maintenance.

Who can Apply under *The DWCMA?*

To apply under this Act, a wife must have been deserted by her husband. A wife is considered deserted under the following circumstances:

1) A husband has not supplied his wife the necessaries of life (food, clothing, shelter and other things which are needed to live).

2) A husband has committed adultery which has not been condoned by his wife. Adultery occurs when a married person has sexual intercourse with someone other than that person's spouse. A wife is said to have condoned her husband's actions if she shows she has forgiven his offensive conduct and the couple continues to live together as husband and wife.

3) The wife is living apart from her husband because of his acts of cruelty towards her. Cruelty is usually defined as conduct, on the part of the offending spouse, which has made cohabitation (living together) intolerable. This conduct must be truly abusive, not just unpleasant or irritating. What will amount to cruelty will depend on the individual case. However, the following examples may serve to illustrate what the court will consider as conduct amounting to cruelty. Cruelty was found to exist in the following cases: a husband made all the decisions and ignored his wife's opinions with the result that the wife became nervous and depressed; a husband insisted on performing coitus interruptus against his wife's wishes, so that she became mentally unbalanced and had to use tranquilizers; a husband had frequent temper tantrums and was constantly accusing his wife of infidelity.

If a wife wants to bring an action on the grounds of cruelty, she must be living apart from her husband. However, a court may find that a husband and wife are legally living apart when they occupy the same house, provided that there is little communication between the spouses and the husband and wife do not share household duties.

When will a Wife be Prohibited from Obtaining Maintenance under the Act?

1) She has committed uncondoned adultery.

2) She has left her husband. However, if a wife has left her husband because of his cruelty, she is still entitled to receive maintenance payments.

3) If the husband does not have enough money to make payments, the court may not force him to pay, even if the wife is entitled to maintenance under the Act. However, the wife could bring another application when her husband's financial situation improves.

In this case, it is a good idea to ask for a nominal maintenance order of $1 per year, so that a wife can apply to vary the order without having another hearing.

4) If the wife has enough money to support herself, she may be denied maintenance payments. The court will likely issue a maintenance order if the wife has barely enough money to survive and her husband is capable of contributing to her support. If the husband is giving his wife some money, she can still apply under the

Act if the amount he gives her is not sufficient to meet her needs. Even if a wife is self-supporting, she should ask for a nominal maintenance order which could be varied if circumstances change and her income is reduced.

Rehearing

If a wife's application is turned down, she can still apply for a rehearing. A rehearing will usually be granted if a wife can bring evidence which might make the court change its decision. New evidence is usually defined as important evidence which could not be discovered at the original hearing.

Payments

Theoretically, the court will try to order that the husband pay an amount which will allow the wife to enjoy a reasonable standard of living. However, what is considered a reasonable standard of living depends on the case. In making its decision, the court will consider the lifestyle of the husband and wife before the separation, and what the wife's needs are. For example, a wife who is ill and cannot work would receive more than a wife who had her own income. In practice, many wives find that the amount of maintenance is not enough to allow them to live in the same way as they did before the separation.

Kind of Payment

Maintenance payments may consist of one lump sum payment or smaller amounts paid on a weekly or monthly basis.

Variation

The amount paid under the maintenance order can be varied if there is a change in a party's income or way of life. For example, if the husband loses his job and can no longer afford to make payments, he can apply to have the amount of maintenance reduced. If the wife suddenly becomes ill and cannot work, she can apply to have the amount of payments increased. Some courts will vary an order if the husband or wife remarries. The person who wants a variation in the order must apply to the court to have the order varied. The judge will hear the application and increase or decrease the order if he/she thinks it is necessary.

Advantages and Disadvantages of an Application under *The DWCMA*

The primary advantage of applying under this Act is that proceedings are quick and inexpensive. The main problem with applying under *The DWCMA* is that a maintenance order does nothing to affect the couple's marital status. The husband and wife are still legally married.

Application for Alimony under *The Queen's Bench Act*

When can a Wife Apply under this Act?

A wife can apply for alimony under *The Queen's Bench Act* only if she would be entitled to apply for an Order for Judicial Separation or Restitution of Conjugal Rights. She does not have to apply for judicial separation or restitution of conjugal rights, but the grounds for such an application must exist.

What is an Order for Judicial Separation?

An order for judicial separation means that the husband and wife are no longer obliged to live together. This is what is commonly known as a legal separation. However, the husband and wife are still legally married; they are not free to marry anyone else.

A wife can apply for judicial separation if her husband has committed one of the following matrimonial offences:

1) uncondoned adultery,

2) cruelty,

3) sodomy (anal intercourse),

4) bestiality (intercourse with animals), or

5) desertion without reasonable cause for at least two years. Desertion under this Act does not mean the same thing as it does under *The DWCMA*. A husband deserts his wife if he leaves against her wishes with no intention of returning. A husband also deserts his wife if he is cruel to her and she is forced to leave him, or if she deserts him and then refuses any offer of reconciliation.

What is an Order for Restitution of Conjugal Rights?

When a husband has left his wife without good reason, the wife can apply for an Order for Restitution of Conjugal Rights. This order will simply demand that the husband resume cohabitation with his spouse. If the husband refuses to do so, the wife can apply for alimony only, or she can apply for a judicial separation with an alimony order. An Order for Restitution of Conjugal Rights is commonly used to speed up an application for judicial separation. Normally, if a husband deserts his wife, the wife must wait for two years before applying for a judicial separation. If an order for Restitution of Conjugal Rights is issued, and the husband ignores it, she can apply for alimony and for a judicial separation immediately.

When will a Wife be Prohibited from Obtaining Alimony under *The Queen's Bench Act?*

A wife will be denied an order for judicial separation if she has been guilty of one of the following types of misconduct:

1) The wife has connived at her husband's adultery. This bar applies only where the application for judicial separation is brought on the grounds of adultery. Connivance occurs when a wife encourages her husband to commit adultery. What will amount to connivance will depend on the circumstances of the case.

2) The wife has condoned the matrimonial offence complained of. Condonation occurs when a wife forgives her husband's conduct and continues to live with him after he has committed the matrimonial offence.

3) The husband or wife have colluded to present the application. Collusion occurs when the couple agree to make up or hide evidence to have the order granted. However, the parties only have to bring forth evidence which is related to the grounds for separation. Therefore, if the application is based on desertion, evidence of cruelty or adultery does not have to be brought into court.

4) The wife has committed uncondoned adultery.

A wife may be entitled to receive an order for judicial separation, but she may be denied alimony payments if she is self-supporting or if her husband cannot afford to pay alimony. If this is the case, a wife should ask for a nominal maintenance order which can be varied if the financial situation changes.

Payments

The amount paid under an alimony order is calculated in the same way as the amount paid under *The DWCMA*. Payments are made on a weekly, monthy or yearly basis. Like *The DWCMA*, alimony orders can be varied if circumstances warrant. (For further information see the section on payments under *The DWMCA* at page 14.)

While a wife is waiting for a hearing under *The Queen's Bench Act*, she can apply for interim alimony. An application for interim alimony can be granted vary quickly. All the wife must establish is that a valid marriage exists and that she needs financial support. A wife usually receives less on an interim order than on a permanent order. The interim alimony payments will last until a permanent alimony order is granted or refused.

Advantages and Disadvantages of Applying under *The Queen's Bench Act*

The major disadvantages of bringing an application under *The Queen's Bench Act* is that it is more expensive and takes longer than an application under *The DWCMA*. An application for alimony is usually only made under *The Queen's Bench Act* if it is accompanied by an application for judicial separation. If a judicial separation is granted, the couple has no obligation to cohabit. Therefore, a wife is entitled to refuse any offer of reconciliation made by the husband.

It is important to note that only a wife can apply for maintenance for herself under *The DWCMA* or *The Queen's Bench Act*. These Acts do not provide a remedy for a husband who is in need of financial support. However, a husband may apply for a judicial separation.

Enforcement of Maintenance and Alimony Orders

Once the wife receives a court order, the order must be "served" on the husband to be effective. This means that a copy of the order must be given directly to the husband. Once a judgment is obtained and served, certain legal steps can be taken to collect the money owing under the maintenance order if the husband fails to pay. It is important to realize that the court will usually not issue judgment for arrears of maintenance against a husband if payments have been overdue for more than a year and no legal action has been taken.

There are several ways to enforce a judgment issued against a husband:

1) Garnishment of the husband's wages — when wages are garnisheed, the husband's employer will receive a garnishee summons. The employer must pay a certain amount of the husband's wages into court. The court will then pay the money to the wife. Under *The Attachment of Debts Act*, there are special provisions for enforcement of maintenance orders. Once the garnishee summons is served, the employer must continue to pay a portion of the husband's wages into the court after each pay day for as long as the husband works for the same employer.

2) Seizure of the husband's goods — if the husband is in arrears, the wife can obtain a judgment and issue a writ of execution against the husband's goods (such as his car, his boat or stereo). Once such a writ is issued, a sheriff can seize the goods and sell them at a judicial sale. The wife will then receive the proceeds of the sale. (For further information regarding writs of execution, see page 74.)

The problem with the above remedies is that the courts can only enforce a garnishee summons or a writ of execution while the husband remains in the province. However, some other provinces and countries have made agreements with Saskatchewan called reciprocal agreements. These agreements allow a woman in Saskatchewan to register her maintenance order in another province. The order will then be enforced by the courts in the other province. However, if a man is continually moving from one place to another, registration of the maintenance order may be useless. It takes some time for a maintenance order to be registered and enforced. By this time, the husband may have moved to still another province. Because of these problems, and the expense of issuing summonses and writs, many orders are not enforced.

3) Criminal conviction — if the court finds that a husband has refused, without good reason, to pay a maintenance order made under *The DWCMA*, the husband has committed a summary conviction offence. The court then has the power to fine the husband up to $500 and/or imprison him for up to six months. However, the court will not usually send an offending husband to jail unless he has repeatedly failed to make maintenance payments.

4) Filing a claim against the husband's property — if the husband has real estate, the wife may be able to have her maintenance order registered against her husband's property. Registration of the maintenance order does not force the husband to pay. However, if the husband attempts to sell or mortgage the land, the wife's maintenance order will appear on the husband's document of title. Most buyers and mortgagees do not wish to deal with land that has a claim against it. So in this situation the husband will usually try to satisfy the maintenance order and have the claim removed.

If a woman wishes to file a claim against her husband's land, she should contact the Land Titles Office in the area in which the land is situated. The Registrar of Land Titles can give her instruction on how to file the claim.

Separation Agreements

When a husband is willing to support his wife and children, the husband and wife do not have to go to court. Instead, they can draw up a contract know as a separation agreement. In this situation, both the husband and wife will be represented by a lawyer and the lawyer will attempt to draw up an agreement that both parties can accept. To ensure that the settlement is a fair one, each person should have his/her own lawyer.

What will be Included in a Separation Agreement?

The agreement will state that the husband and wife agree to live separate and apart. It will also determine some or all of the following issues:

1) who has custody of the children;

2) the visiting rights of the parent without custody;

3) how much maintenance the husband must pay; and

4) how any matrimonial property will be divided. (If the separation agreement deals with the division of matrimonial property, certain formalities must be followed. These formalities are discussed in the section called Division of Matrimonial Property.)

When will the Court Vary a Separation Agreement?

A separation agreement is always invalid if one of the parties has signed the agreement against his/her free will. A contract could be declared void under one of the following circumstances:

1) one person has signed the contract without consulting a lawyer;

2) the wife or husband signed the contract without knowing the true state of his/her spouse's financial situation; or

3) one person has been forced into signing the agreement. For example, in one case, a separation agreement was declared void when the husband acquired his wife's signature after forcing brandy down her throat, and throwing temper tantrums when she tried to consult her lawyer.

To ensure a separation agreement is valid and fair, each spouse should get independent legal advice.

A separation agreement can also be varied if it does not suitably provide for the wife and children's maintenance. In this case, the wife can apply under *The DWCMA* or *The Queen's Bench Act* to have a maintenance order issued. If there has been an unexpected change in circumstances that makes the husband unable to pay, or the wife is in need of greater support, the court may also step in and issue a maintenance order. To avoid this problem the agreement should outline what will happen if there is a change in the income or the needs of the parties.

When will a Separation Agreement Terminate?

The husband and wife can agree that the contract will end if one of several events occurs. For example, the agreement may state that if the wife remarries, the separation agreement will end.

If there is no termination clause in the agreement, the court will imply a termination clause by looking at the agreement as a whole and considering public policy. For example, the courts often decide that a separation agreement terminates if the couple begins to live together again. When a separation agreement ends, the wife may be able to apply for a maintenance order.

Enforcement of Separation Agreements

If one party fails to uphold the provisions of the separation agreement the injured party has several remedies:

1) The injured party can sue for breach of contract or specific performance. If a person sues for breach of contract, he/she will be awarded a lump sum called damages. If the damages are not paid, a garnishee summons or a writ of execution can be issued.

2) If property is involved, the court may issue an injunction which will prevent any disposal of the property which is contrary to the terms of the separation agreement.

3) The injured party may treat the contract as void and bring an action for maintenance under the appropriate legislation.

Divorce

A husband or wife may apply for a divorce when he or she wishes to bring the marriage to an end. If the court grants a divorce, it will also decide how much maintenance the husband (or wife) must pay and who will have custody of the children. The procedure for obtaining a divorce is governed by *The Divorce Act*.

Jurisdiction

Courts do not like to encourage couples to shop around for a court which will given them a quick and easy divorce. For this reason, *The Divorce Act* states that a person who brings a petition must have some ties with Canada and with the province where the action is heard.

The court will hear a petition for divorce if two criteria are met:

1) The petitioner (the person who brings the action for divorce) is domiciled in Canada. A person is said to be domiciled in Canada if he/she is presently living in Canada and intends to reside here indefinitely.

2) The petitioner or the respondent (the person against whom the action is brought) has:

    (a) been "ordinarily resident" in the province where the action is brought for at least one year; and

    (b) has "actually resided" in the province for 10 months of that year.

Actual residence means being physically present within the province. Ordinary residence is established by showing some connection with the province. For example, if a person owns a home in Saskatchewan he/she may be ordinarily a resident within Saskatchewan even if he/she was not physically present there at all times.

A divorce cannot be obtained simply by mutual consent. The petitioner must show that the marriage has broken down. A petitioner can obtain a divorce if the respondent has behaved in a way which would make the marriage intolerable. This type of conduct gives rise to fault-related grounds for divorce. If a petitioner applies for a divorce under one of the fault-related grounds, he/she can obtain a divorce quite quickly. A divorce can also be granted on the ground of marriage breakdown. In this situation, the petitioner must show that the marriage has collapsed because of the couple's physical separation or because of the respondent's physical or emotional handicap.

Fault-related Grounds

A court will grant a divorce if the petitioner can show that the respondent has committed one of the following matrimonial offences:

adultery,
rape,
sodomy,
bestiality,
engaged in homosexual acts,
cruelty, or
bigamy.
(Bigamy occurs when a husband or wife goes through a form of marriage with another person while his/her legal marriage is still in existence.)

The above terms are explained on page 15.

Marriage Breakdown Grounds

If a petitioner applies for a divorce under the grounds of marriage breakdown, it must be shown that the marriage has broken down for one of the following reasons:

1) The respondent has been imprisoned for a period of time totalling three years, during the five-year period immediately preceding the presentation of the petition. This does not mean that the respondent must have been in prison for a total of three years within the five years before the petition was brought. For example, if a husband was in prison from January 1975 to January 1977 and was then imprisoned in March 1979 a wife could petition for divorce in March 1980.

2) The respondent has been in prison for the last two years and he/she must serve a sentence of 10 years or more.

3) The respondent has been addicted to drugs or alcohol for three years before the petition was brought and it is not likely that he/she will recover within a reasonable length of time.

4) The petitioner has had no information as to the whereabouts of his/her spouse for three years before the petition is brought.

For example, if the husband left the house one day, never returned and never contacted his wife, she could petition for divorce. But if she received even one letter from him during this time, the petition would not be granted.

5) The respondent has not consummated the marriage within one year of the ceremony. Consummation is one complete act of sexual intercourse occurring after the parties have been married. If intercourse has taken place once after the marriage ceremony, this ground of divorce does not exist.

6) The husband and wife have lived apart for three years. In this case, either spouse may bring a petition provided the separation is by mutual consent. If one spouse has deserted the other, the deserted spouse may also bring a petition after three years. The deserting spouse must wait for five years before bringing a petition.

If the respondent has been in the hospital for three years, some courts will consider this to be a mutual agreement to separate. The petitioner can then apply for a divorce after three years. However, other courts see the healthy spouse as a deserting spouse in this situation and require this person to wait for five years before bringing a petition.

The Divorce Act provides that if couples are living separate and apart, they may reunite for a period of less than 90 days, without endangering their right to bring a petition under this ground. The time spent together is considered part of the three year (or five year) separation period. However, if they remain together for more than 90 days and then separate, the three year (or five year) period must start all over again.

Bars to Divorce

Even if there are grounds for divorce, a divorce will not be granted if the parties have done something the court considers immoral. A petition will be refused in the following situations:

1) the husband and wife have been guilty of collusion, or

2) the petition is brought on one of the fault-related grounds, and the petitioner has condoned or connived at the conduct complained of. However, a petitioner will not be found guilty of condonation if he/she reunites with his/her spouse for a period of less than 90 days to attempt a reconciliation. Even if the petitioner has been guilty of condonation or connivance, the court may grant the divorce if it would be in the general interest of everyone concerned.

If a petition is brought on the grounds of marriage breakdown, the court may not grant a divorce even if there has not been guilty misconduct. A petition will be refused if:

1) There is a reasonable likelihood that reconciliation will occur within a reasonably foreseeable period.

2) A divorce would make it very difficult for the children of the marriage to receive adequate financial support. For example, if the family's only income was a pension which would terminate if the mother and father got a divorce, the petition might not be granted.

3) The granting of a decree would be unduly harsh to either spouse or would make it very difficult for a spouse to receive adequate maintenance.

Maintenance under *The Divorce Act*

Interim Orders

If a wife (or husband) needs some money to live on before the petition is heard, she(he) may apply for an interim maintenance order. To get an interim maintenance order, it must be shown that a valid marriage has taken place and that the wife (or the children) need financial support. At this point, the court does not consider whether the proper grounds for divorce exist.

Amount. The wife will usually receive less under an interim order than she would under a permanent order. Generally, the amount of an interim order will be about one-fifth of the combined income of the husband and wife. However, the amount could be more or less depending on how much is necessary to meet the wife's needs.

Duration. Usually the interim order will last until the petition is dismissed or a permanent maintenance order is made.

Permanent Maintenance Orders

A permanent maintenance order is made when the *decree nisi* (the provisional divorce decree) is granted. A *decree nisi* always terminates a maintenance order made under *The Deserted Wives' and Children's Maintenance Act*, or *The Queen's Bench Act*. Therefore, if a woman needs financial support after divorce, she should make sure her lawyer asks for a maintenance order.

Both the wife and husband can apply for maintenance under *The Divorce Act*, but the courts are more reluctant to order payment of maintenance to a man. In most cases a husband will almost have to be penniless before a court will order his wife to make maintenance payments.

Amount. The court will usually start with the principle that the wife is entitled to one third of her husband's income, but this sum will vary depending on the circumstances of the case. The court will look at the wife's needs and the husband's ability to pay. For example, if a woman has a job which provides a good income, she will probably receive less than a woman who is ill and cannot work.

In looking at the husband's ability to pay, the court will consider his monthly salary and other assets he may have, such as stocks, business assets or real estate. A husband cannot avoid paying maintenance by tying up his assets or ordering his financial affairs to hide his income. But, if a man suddenly reduces his income for a good reason (for example, if he quits his job for health reasons) the court will not penalize him.

The court is also entitled to look at the conduct of the husband and wife in awarding maintenance. There have been cases where the wife has been barred from receiving maintenance because she has deserted her husband or committed adultery. But today, the courts usually look at the wife's conduct as only one of many factors which determine the amount of maintenance and some judges will not look at conduct at all.

When to Apply for Maintenance

Usually the wife applies for maintenance when she or her husband petitions for divorce. But sometimes, a woman does not apply for maintenance at this time, either because she is self-supporting or because her husband has no income. A problem arises when she wants to apply for maintenance after the divorce is granted. Saskatchewan courts usually do not allow the wife to apply for maintenance after the *decree absolute* is received.

If the wife does not need maintenance when the petition is granted, but expects she may need maintenance in the future, she can ask for a nominal maintenance order of $1 per year. Once a maintenance order is granted it can be changed if there is change in the needs or income of the parties.

Kind of Payments

Maintenance payments can be made in one lump sum or on a regular weekly or monthly basis. Most maintenance payments are periodic payments. A lump sum is usually ordered in cases where:

1) A wife needs a large sum of money to complete some kind of vocational training or education.

2) The court thinks the husband may fritter away his capital.

3) The husband and wife are on very bad terms and do not wish to have any further contact.

Enforcement of Maintenance Orders

Maintenance orders made under *The Divorce Act* are enforced in the same way as maintenance orders made under *The Deserted Wives' and Children's Maintenance Act* or *The Queen's Bench Act*. However, under *The Divorce Act*, there is no provision for sending a husband to jail if he has defaulted on his payments.

Decree Nisi and *Decree Absolute*

A decree of divorce will usually be granted if the proper grounds have been established. This decree dissolves the marriage; the man and woman are then relieved of the obligation to cohabit and are free to marry other people.

After the petition is heard, the judge will grant a *decree nisi*. This is a provisional decree, which usually becomes absolute within three months. During this three-month period, either party has the chance to appeal the decision or to show that the decree should not be made absolute because: there is a chance of reconciliation, there has been collusion or there is some other good reason.

If the *decree nisi* remains uncontested for three months, either party can file an application in the office where the proceedings were started. The decree will then be made absolute. Until the decree is made absolute, the marriage still exists and the man and woman are not free to remarry.

Division of Matrimonial Property

Under *The Divorce Act, The Deserted Wives' and Children's Maintenance Act* and *The Queen's Bench Act*, the court has the power to order the payment of maintenance, but not the division of property (such as the family home or the assets of the family business). If the husband and wife cannot reach an agreement regarding division of their property, one of them can make an application under *The Matrimonial Property Act.* When the application is heard, the husband and wife will appear in court. A judge will hear all the relevant evidence and make a "matrimonial property order." The order will distribute the family assets between the husband and wife.

Who does the Act Apply to?

The Act only applies to a couple who are married at the time of making the application. A person who has received a *decree absolute* of divorce or a judgment of nullity or a common-law spouse cannot apply under this Act. However, a widow or widower can apply for division of the matrimonial property provided the application is made within a certain time. (Note: details provided in the section on wills.)

A spouse can make a claim for distribution of the property even if the couple are living together. The Act can be enforced when there is no marital dispute.

What Property does the Act Deal with?

The court can order the division of the "matrimonial home" or any "matrimonial property."

What is the Matrimonial Home?

Almost any kind of living accommodation will be considered a matrimonial home if it can be shown that:

1) The premises were used as the family home. If the couple has not yet occupied the premises, the Act will still apply, provided the parties intended to use the premises as a family home.

2) The husband or wife owned or rented the home. If a spouse owns a company or is a shareholder in a company, he/she may buy a home and have it registered in the company's name. The court would still consider this to be a matrimonial home.

What is Matrimonial Property?

Matrimonial property includes almost any kind of property owned by either the husband or wife. However, it does not include the following things:

1) Any gift or inheritance, other than the matrimonial home or household goods, given to one spouse before the marriage, unless it can be shown the gift was given with the intention of benefitting both parties.

2) Property which was owned by one spouse before the couple was married.

If a spouse takes the gift, inheritance or property and sells it, the cash that spouse receives will not be considered part of the matrimonial property. However, if the property owned by one spouse has increased in value during the marriage, the amount by which the property has appreciated will be divided between the spouses.

3) Property acquired by one spouse after a *decree nisi* for divorce or a judicial separation or a declaration of nullity of marriage.

4) Money paid to one spouse under an insurance policy or in a court action for personal or property damage.

If the property or cash mentioned in 3) and 4) above increases in value or yields an income, this money will also be exempt from distribution.

If it would be fair to do so, the court can still order that the property listed in these exceptions will be divided between the husband and wife.

How is the Property Divided?

Matrimonial Property

In dividing matrimonial property the court starts with the principle that the applicant is entitled to one-half of all the property. However, the applicant can receive more or less than one-half of the family assets if the court thinks that an equal distribution is unfair.

To decide what a fair distribution would be, the court will look at the following factors:

1) Any written agreement between the husband and wife.

2) How long the husband and wife have lived together.

3) How long the husband and wife have been separated.

4) If a spouse has contributed money or labour to buying or managing the matrimonial property. For example, if the husband owns a farm and the wife has helped him run it, the court will look at this fact in making its decision.

5) If one spouse has helped another spouse with the other's career. For example, if a wife has worked to put her husband through school, the court will look at this fact in making this decision.

6) If a spouse's ability to earn money has been affected by marriage. For example, a woman may quit her job to look after her home and family and then have a hard time finding a job at a later date. The court will look at this fact in making its decision.

7) Any previous distribution of the property by agreement or by court order.

8) Any tax liability which might result from the sale of matrimonial property.

9) If a spouse has dissipated the matrimonial property.

10) Any benefits a spouse may receive on the death of the other spouse.

11) Any child support a spouse must pay.

12) Any debts of a spouse.

13) The fact that a spouse might have property located outside of Saskatchewan.

14) If a third party, on behalf of one spouse, has contributed money or labour to buying or managing the matrimonial home.

15) The interests of third parties in the matrimonial property.

16) Anything else the court might consider relevant. Sometimes the actual property is not distributed, but the value of the property is divided between the spouses. For example, if a man owns a farm worth $100,000, he may keep the land and the wife would receive an award of $50,000 instead of one-half of the farm.

The Matrimonial Home

If an application is made for division of the matrimonial home, the court will divide the home (or the proceeds from the sale of the home) equally between the spouses. This distribution will rarely be other than 50-50, but the court has the power to order any distribution that is fair. An order for equal distribution will only be altered if:

1) There are extraordinary circumstances. Because this Act has only recently come into force, it is not clear what the court will consider an extraordinary circumstance.

2) A 50-50 division of the home would not be fair to the spouse who has custody of the children. For example, a wife may have custody of the children and the court may decide that it is best that the children continue to live in the same house. In this situation, the court would probably order that the title to the house should be put in the wife's name.

If the parties own more than one home, the court will order that one house be distributed according to the above principles. Any other home will be treated as matrimonial property.

Dissipation

Sometimes a situation arises where one spouse will sell or give away matrimonial property to avoid dividing his/her assets with the other spouse. The court will provide a remedy if one of the following facts can be proven:

1) A spouse has dissipated the matrimonial property. For example, a husband may take the family's savings and purchase all kinds of unnecessary luxuries. This would probably be considered dissipation.

2) The spouse has sold any matrimonial property for less than its real value, for the purpose of defeating any claim the other spouse may make. Here, it must also be shown that the buyer of the property knew or ought to have known that the sale was made to defeat a claim under the Act.

An example will show how this section of the Act will operate. A man and woman are separated. The husband knows his wife will apply for a division of property under the Act. He owns some shares in a company which he does not want the wife to have. So he sells the shares to his brother. The shares are worth $5 per share and he sells them for $3 per share.

Under these circumstances the brother would know or ought to know that the husband sold his shares to avoid his wife's claim. This section would therefore apply.

If the husband sold his shares to a stranger, the section would probably not apply. A stranger would not know why the husband wanted to sell his shares.

If the brother bought the shares at $5 per share, the section would also not apply. Even if the husband's dishonest motives were known, the section will not apply if the shares were sold at a fair price.

3) One person has made a substantial gift to another person, without the other spouse's consent.

In any one of the above situations, the sale, gift or dissipation must take place within two years before the application is made.

When it is shown that one spouse is trying to defeat a claim under the Act, the court will order one of the following remedies:

1) it may count the property which has been sold, given away or wasted as part of the offending spouse's share of the property; or

2) it may order that the buyer or the donee pay to the innocent spouse an amount of money to compensate for the property received.

When one spouse anticipates a dissipation, transfer or gift of the property, that spouse can apply to the court for an order to restrain the dissipation or transfer. These orders can be issued quite quickly, since only the complainant need appear before a judge or give evidence.

Interspousal Contract

A husband and wife can draw up an agreement dividing their property as they see fit. This is called an interspousal contract. In this case, the court will not order a distribution of the property which is different from that provided in the agreement. However, an interspousal contract only applies to property mentioned in the agreement, the court is free to distribute other matrimonial property according to the provisions of the Act.

There are certain formalities which must be complied with before a court will enforce an interspousal contract. These are:

1) the contract must be in writing and signed by each spouse in the presence of a witness; and

2) each spouse must also acknowledge, in writing, that:

    (a) he/she knows the effect of the contract; and

    (b) he/she knows that he/she may have had a claim under *The Matrimonial Property Act* and that the contract will take away some of his/her rights provided by the Act.

This acknowledgment must be made before a lawyer. The lawyer who accepts this statement cannot be the same one who accepted the other spouse's acknowledgment.

When can the Contract be Made?

An interspousal contract can be drawn up before the man and woman are married, but it will not be enforced until after the marriage. Unlike other separation agreements, an interspousal contract can be made while the parties are still living together.

Any agreement drawn up before the Act came into force is not an interspousal contract. (The Act came into force January 1, 1980.) Any written agreement made before the Act came into force will be given the same consideration it would have been given under the law previous to the new Act.

Will an Interspousal Contract Always be Enforced?

Even if the contract is drawn up according to all the formalities of the Act, the court will not enforce it if the terms are extremely unfair. In this case, the court will divide the matrimonial property according to the principles of the Act.

Common-law Rights

There is no specific legislation giving the common-law wife a right to maintenance or a share in her partner's property. If a woman wants financial support from her common-law husband, she must use one of the old legal remedies provided by the case law. The most common remedies are a claim *in quantum meruit*, or an action to establish that a trust has been created, or enforcement of a domestic contract.

What is *Quantum Meruit?*

If a woman has provided housekeeping services or helped her partner in his business and has received no payment, she may claim for the value of the services rendered. This is a claim *in quantum meruit*.

The Problems with *Quantum Meruit*

There are some problems with an action of this kind. Some courts will not uphold a claim *in quantum meruit* unless there has been an intention to create a valid contract. If a woman provides services voluntarily and a partner gives no promise to pay her, a claim *in quantum meruit* may not succeed. Even if an intention to contract is established, the court may not uphold the agreement. Some judges think it is immoral to uphold a domestic contract between two unmarried people who are having sexual relations.

Even if the claim succeeds, it may not be worth the expense of initiating a court action. The court usually only awards payment for services over and above ordinary housekeeping services. Unless a woman has made an extraordinary contribution, the amount of the award may be quite small.

Trust

A woman may be entitled to a share of her partner's assets if she can show a trust has been established in her favour.

What is a Trust?

When one person holds the legal title to property but is obligated to give all the benefits and income from the property to another person, he/she holds the property "in trust."

When will the Court Impose a Trust?

A trust will be imposed when the court thinks it is fair to do so. For example, a woman may help her partner acquire certain assets by giving him money or by helping him build up his business. If the man does not pay his partner for her contribution, he is said to have received "injust enrichment." To remedy this injustice, the court will assume that the man held some of the property "in trust" for his partner. The woman will then be entitled to a portion of the man's property.

In deciding whether or not to impose a trust the court will look at the following factors:

1) The kind of service the woman has contributed. If the woman only provides housekeeping services or child care, the court may not impose a trust in her favour. The court may require that the woman show she has directly aided the man in his business ventures before it will impose a trust.

2) The length of time the parties have lived together.

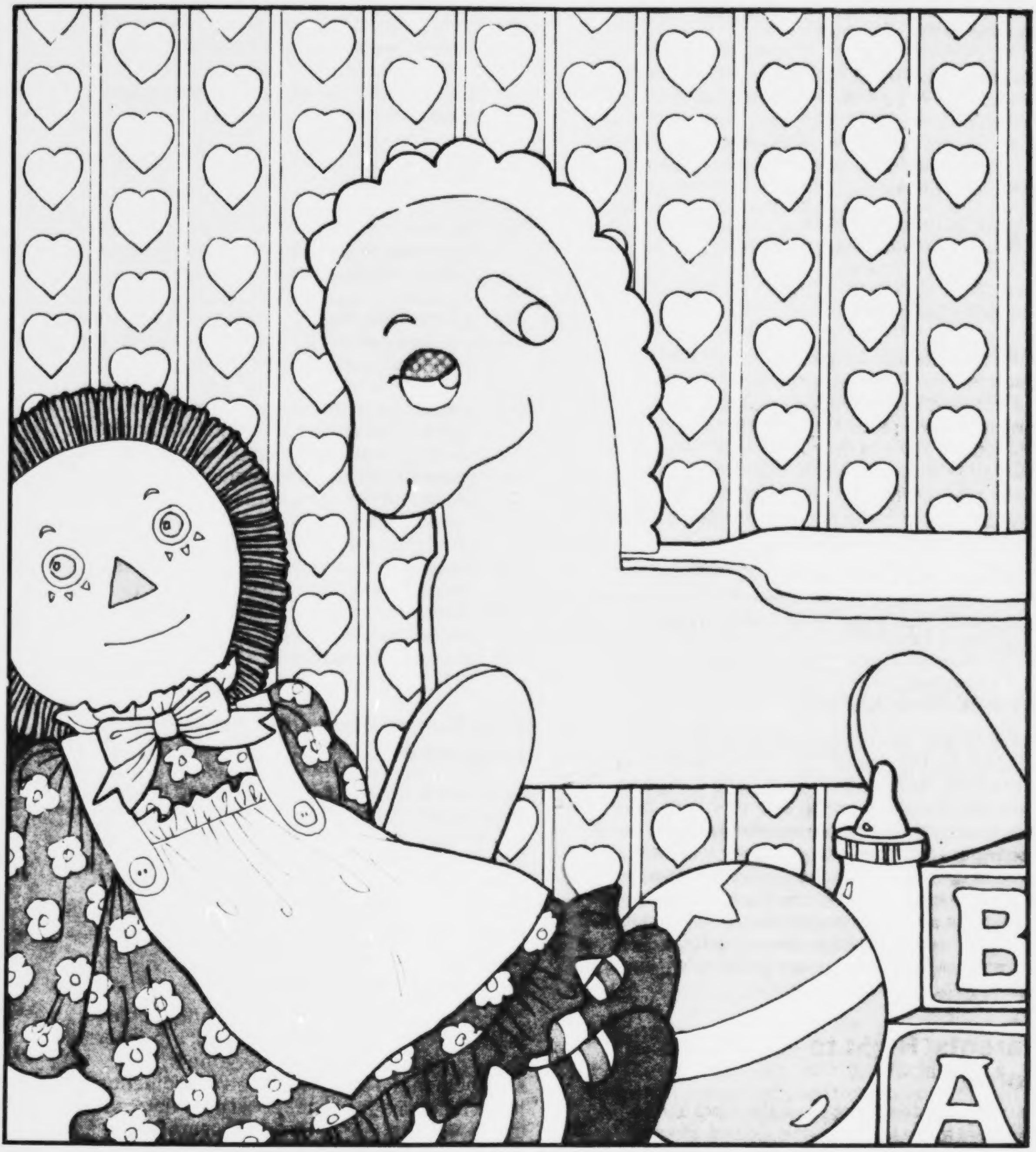
3) Any other relevant fact.

Domestic Contract

A man and woman can draw up a contract which provides for distribution of property between them. The contract can also provide for payment of a living allowance from one partner to the other. If one partner does not honour the terms of the agreement, the injured party can sue for breach of contract or specific performance. (See page 18, Separation section.)

The court has the power to enforce the contract; it will only uphold the agreement if it decides that the terms are fair and reasonable. Some judges may not uphold a domestic contract between two unmarried people, on the grounds that the contract is against public policy.

Women as Parents



Women as Parents

Parental Obligations

At Birth

Under *The Vital Statistics Act*, the birth of every child must be registered within 15 days of the birth. The mother is obliged to register the birth of the child, but the father must do so if the mother does not register the birth. However, the father is under no such obligation if he is not married to the mother.

If a child is born in a hospital, the hospital will provide the registration form and send it to the proper official. When a child is born outside of a hospital, the parent can get a registration form from any hospital or public health nurse. The form must be mailed to:

Vital Statistics Division
Saskatchewan Health
3475 Albert Street
REGINA S4S 6X6
(Phone 565-3092)

If the parents are married, the child will be given his/her father's surname. If the parents are not married, the registration papers will give the child the mother's surname. However, if a man declares he is the father, and the mother and father both request it, the child may be given his/her father's surname, or the registration form will show information about the father.

If the child's parents later marry, the child is legitimized. A new registration form will then be registered, giving the child his/her father's name.

Financial Support

Every parent has the obligation to provide a child under the age of 16 with the necessaries of life. Necessaries of life are such things as food, shelter and medical treatment. If a parent fails to provide necessaries and thereby endangers the health of a child or leaves the child in destitute circumstances, he/she is guilty of a criminal offence. It is also a criminal offence to abandon or expose a child under the age of 10 so that his/her life or health is endangered. The maximum penalty for these offences is two years in prison.

Parents' Right to use Physical Force

Parents and teachers have the right to use physical force to discipline a child. However, the adult must only use a reasonable amount of force. If a person uses unreasonably harsh methods of discipline, he/she can be charged with assault. What is a reasonable amount of force depends on the circumstances of the case. If the child is beaten so badly that death results, the parent or teacher can be charged with manslaughter.

Child Abuse

Child abuse is any intentional act or omission by a parent or custodian which results in physical or psychological injury to the child. *The Family Services Act* provides for the protection of children. Circumstances which may involve the protection of children are:

1) he/she is without proper or competent supervision;

2) he/she is living in circumstances that are unfit or improper for him/her;

3) he/she is in the custody of a person who is unable or unwilling to exercise proper control over the child;

4) his/her life, health or emotional welfare is endangered by the conduct of the person who has custody of the child;

5) the parent or custodian neglects or refuses to provide or obtain proper medical, surgical or other recognized remedial care or treatment necessary for well-being or normal development, or refuses to permit such care or treatment to be supplied to the child when it is considered essential by a duly qualified medical practitioner; or

6) his/her parent is unfit, unable or unwilling to care for him/her.

How Can an Abused Child be Protected?

The Family Services Act is designed to protect the abused or neglected child and to give aid to his/her parents. Under the Act, the court has the power to remove a child from his/her home. It can also order that a parent take certain measures to ensure that the mistreatment does not occur again.

How does the Act Work?

The Family Services Act is of no effect unless incidents of child abuse or neglect are reported to the proper authorities. Everyone who suspects that a child is in need of protection has a legal obligation to report the information to an intake officer of Saskatchewan Social Services or to a police officer.

The following are some symptoms of child battery; they can be spotted by teachers, neighbours or hospital staff:

1) a child who has cuts and bruises on both sides of his/her face or on the back of his/her body;

2) a child who has injuries which cannot be explained by the parents' account of the accident;

3) an abused child will, when his/her limb is placed in an unusual position, hold it there for a long time. For example, if a child is treated for injuries, many doctors will raise a child's arm above his/her head. If the child holds his/her arm in that position for more than three minutes, child abuse is suspected; or

4) a child who is dead or injured and is beautifully clothed or wearing a religious symbol.

At present there is no penalty for failure to report incidents of child abuse or neglect, but the Act may soon be amended. Under the amendment, any professional who fails to report a case of child abuse can be fined up to $2,000.

Protection for an Informant

A person can give the necessary information by making an anonymous phone call. Intake officers will not ask for the name of the caller, although they would prefer to see the informant. If an informant gives his/her name, Saskatchewan Social Services will try to protect his/her identity, but the informant may later be called as a witness in court. In this case, a witness can be forced to go to court and testify.

If a report is false, the informant cannot be sued or charged with any offence unless the report was made maliciously (with the intention to harm the parent rather than to protect the child)

The Investigation

Once a report has been made, a social worker will investigate the complaint. If the officer thinks a child is in need of protection he/she may:

1) have the child taken from the home and placed temporarily in a foster home or a child care institution; or

2) leave the child in the home and take whatever steps are necessary to make sure the child is safe.

The Hearing

If the child has been removed from the home or if the social worker thinks a child needs protection, a court hearing will take place to determine if the child needs protection. The judge must fix a time for the hearing within 30 days after the child has been taken into custody. Saskatchewan Social Services must then deliver to the parent a document stating the time and place of the hearing.

All hearings are held in private, only those people directly involved in the case are allowed in the court room. Both Saskatchewan Social Services and the parents have a right to be represented by a lawyer. If the parents cannot afford a lawyer, Social Services will provide one. The judge will look at all evidence to determine if the child is being abused. It is not necessary to establish that one particular person is harming the child. The judge must simply determine that the child is being abused while he/she is at home. If the judge decides the child has been abused, he/she may make one of the following orders:

1) The child may be returned to his/her parents, provided the parents follow the conditions set out in the order. For example, if a parent abuses a child when he/she is drinking, he/she may be ordered to get professional help to cope with his/her drinking problem. If the child is returned to the parents, a social worker has the right to visit the child reguarly for up to one year. This is to make sure that the child is not beaten again.

(2) The child may be "committed to the Minister." This means that the child is removed from the home and placed in a foster home or a child care institution and the Minister of Social Services acquires legal custody of the child. Committal may be permanent or for a specified period up to one year. If it is for a specified period, the child will be returned to the parents after this time, or another hearing may be held to determine if the child is in need of further protection.

When the Minister acquires custody of the child, the parents have no legal rights or duties with regard to the child. If the committal is temporary, the parents are encouraged to visit their child. However, if the committal is permanent, Social Services does not encourage ongoing contact unless the child is older.

Appeals

If a parent is unhappy with the decision of a judge he/she can appeal the decision to the Court of Queen's Bench. The court has the power to change any order made by the other judge.

Adoption

The procedure of adoption is governed by *The Family Services Act.* Any child under the age of 18, who has never been married, can be adopted. See page 39 for leave available to either or both working adoptive parents.

Consent

The consent of the child's legal guardian is required before adoption can take place. The consent of one of the following people is necessary:

1) If both parents are living, each parent must consent. If one parent is dead, the other may consent.
2) If the child has been adopted previously, the consent of both adoptive parents is necessary.
3) If the mother of the child is unmarried and the child has not been legitimized, her consent alone is sufficient. If the mother is married, but her husband is not the father of the child, only the consent of the mother is required.
4) If both parents are dead, the person with lawful custody of the child may consent to adoption.
5) If the child has been permanently committed to the Minister of Social Services, the Minister's consent is necessary. A child can be "committed" to the Minister by a court order in case of child abuse or neglect. Parents may also voluntarily give custody of the child to the Minister. In this case, the parents may request that the child be returned within 30 days of the committal. If the child has not been adopted, the parents may ask for custody within one year of the committal. The Minister may then return the child to the parents, or apply to a judge for a hearing if he thinks the child is in need of protection. (For further details with regard to a hearing, see page 29.)
6) If a child is over the age of 12, he/she must also consent to the adoption.

Any of the above people, except the Minister of Social Services, may withdraw consent within 30 days after it was given, or at any time prior to the day that adoptive parents petition to adopt the child. A judge can order that consent is not necessary if he/she thinks it is in the child's best interests.

Once consent is given, the child will be put in the custody of Saskatchewan Social Services. Social Services will place the child in a foster home or an institution until adoptive parents are selected.

Adoptive Parents

The following people are eligible to adopt a child:

a widow or widower,
a single person,
the spouse of the natural parent, or
a married couple.

Saskatchewan Social Services gives preference to a married couple.

Adoption Procedure

Before Saskatchewan Social Services places a child in a new home, it must inspect the home to determine if there is a suitable environment for the child. Once the home is approved, the Central Adoption Agency will select a child for the adoptive parent.

Once the child has been placed in a new home, the adoptive parents can petition for an order for adoption. In most cases the petition must be made within one year after the child has been placed in the new home. Before petitioning, the adoptive parents must give the Regional Director of Social Services 30 days notice of their intention to ask for an adoption order.

A judge will hear the petition and issue the adoption order if he/she thinks it is appropriate.

Effect of an Adoption Order

Once an adoption order has been issued, the adoptive parents have all the legal rights and duties with respect to that child as if they were the natural parents. The former parent or guardian loses all his/her right to care for the child. The adopted child will take the surname of his/her adoptive parents unless the order provides otherwise. The new parents may also change the child's first name.

Offences under *The Family Services Act*

It is an offence for anyone other than the natural parents or Saskatchewan Social Services to arrange for the adoption of a child without the Minister's written permission.

It is also an offence to receive payment for helping to place a child in an adoptive home.

Anyone who commits these offences is liable to a fine of up to $5,000 or one year in jail or both.

Custody and Maintenance of Children

What is Custody?

The person who has custody of a child is responsible for his/her care and control. The custodian (the person with custody) has the right to declare how the children will be brought up and educated.

Who has the Right to Custody?

The father and mother share custody of their children until the parents sign an agreement altering the custody rights or the court awards custody to one particular person.

The issue of custody usually arises in one of the following situations:

1) one of the parents has petitioned for divorce;

2) the parents are married but decide to live apart and they cannot agree on who shall have custody of the child; or

3) the parents are not married; one parent has custody and the other parent contests custody.

How to Apply for Custody

If one parent is petitioning for a divorce, the issue of custody can be decided under *The Divorce Act*. The court will hear evidence relating to both maintenance for the wife and custody and maintenance for the children. Under *The Divorce Act*, the court only has jurisdiction to award custody if the child is under 16, or if the child is over 16 and cannot support himself/herself. Once the child is over 16, he/she can usually choose which parent he/she wants to live with.

Except where a parent is petitioning for divorce, the issue of custody will be determined by an application under *The Infant's Act* or *The Queen's Bench Act*. *The Infant's Act* is most often used. Under these Acts, not only the parent, but anyone having a sufficient interest in the custody of the child may apply for a custody order. Under *The Infant's Act* and *The Queen's Bench Act*, the court can make a custody order with regard to any child under the age of 18.

What Factors will the Court Look at in Settling a Custody Dispute?

The court will decide who gets custody by looking at what is best for the child. The person who gets custody will be the one who can provide the best care for the child. In a dispute between the mother and father of an illegitimate child, the courts have in the past given the mother custody unless she had abandoned the child or had been guilty of gross misconduct. Recently, the courts have moved away from this idea. The most important consideration is the welfare of the child.

Each decision will depend on the particular circumstances of the case. However, the court has adopted some general principles in deciding who can provide the best child care. Some of these principles are:

1) Continuity of Custody
The courts think that it is very important that the child should continue to live with the same parent and should not be shifted from one parent to the other. Therefore, the parent who is living with the child at the time of the hearing is often awarded custody. Just as it is possible to get interim maintenance awards, many parents apply for interim custody orders while waiting for their cases to be heard. Often the parent who had custody under the interim order is awarded permanent custody, since the child has continually lived with that parent. Therefore, the real decision as to custody is often made when the interim order is made.

2) The "Tender Years" Doctrine
A child of "tender years" (under the age of seven) tends to be placed in the custody of the mother. However, this is not an absolute rule and the age of the child is of less importance when both parents are working.

3) Psychological Evidence
The court will look at psychological evidence to determine if boys should stay with the father and girls with the mother. However, this is only one of many factors which may be considered.

4) Keeping the Children Together
The court tries to avoid splitting up the children of a family. Therefore, if one child would be far better off with one parent, the parent will usually have the custody of all the children.

5) The Parents' Financial Situation
The financial situation of the husband and wife is usually not important unless one parent does not have the means to adequately support the children.

6) The Child's Wishes
Generally, the court will not interview a child under the age of seven to determine with whom he/she wants to live. The older the child is, the more his/her wishes will be considered. The court takes account of the fact that a child is often unduly influenced by the parent with whom he/she is staying.

7) The Conduct of the Parents
Generally, the court will not look at how the spouses treat each other when settling a custody dispute. But a spouse's conduct may be relevant in considering his/her fitness as a parent.

The court will not deny custody to a parent who is living common-law with another person. This fact will only be considered important if both the husband and wife can provide an equally suitable home for the child. In that case, the court may be more likely to give custody to the parent who is not living with someone else.

Variation of Custody Orders

Either parent (or an interested party) can apply for a variation of the custody order if there is a change of circumstances affecting the child's welfare.

Access Rights

A custody order will usually provide that the other parent will have access rights (the right to visit the children). The parent without custody will be granted access unless it would result in danger to the child. Danger is defined as physical harm or serious emotional disturbance. If a child is slightly upset or cranky after visiting the non-custodial parent, it will not deprive the parent of access. Sometimes the court puts conditions on the access rights of the parent. For example, the court may order that an alcoholic parent can only visit the child when he/she is sober.

If the husband and wife cannot agree, the court will spell out when the access parent is allowed to visit. However, the court encourages the parents to make suitable arrangements between themselves. Otherwise, the parents must go to court to have the order changed each time they wish to alter the timing of the visits.

Enforcement of Custody Order

Sometimes the parent who does not have custody of the child will abduct the child and take him/her to another province. If the initial custody order was made under any Act except *The Divorce Act*, the custodian can enforce the order under *The Extra Provincial Custody Orders Enforcement Act*. The custodian must have the order registered in the province where the child is residing. The court in that province then has the power to enforce the order. However, the court will vary the custody order (thereby awarding custody to a different person) under certain circumstances.

If the court decides to enforce the custody order, it can make whatever order is necessary. The judge could ask the police or Saskatchewan Social Services to take the child and return him/her to the custodial parent. The court can also charge the abducting parent with contempt of court. By abducting a child, the parent has disobeyed a court order and he/she could be fined or sent to prison for up to two years.

Enforcement of Orders Made under *The Divorce Act*

If the custody order was made under *The Divorce Act*, it can be registered in another province and enforced there. To register the order in another province, the parent must send a certified copy of the order to a superior court (the equivalent to the Saskatchewan Court of Queen's Bench) along with $5. The order will then be enforced in the same manner as an order registered under *The Extra Provincial Custody Orders Enforcement Act*.

Problems with Enforcing Custody Orders

The problem with enforcing custody orders is that it takes time for the order to be registered and enforced. By that time, the parent may have taken the child to another province and the custody order would have to be re-registered there. Also, not every province has an *Extra Provincial Custody Orders Enforcement Act*. Therefore, it does not provide a remedy in all situations. If a person wishes to enforce a custody order, he/she should contact the Attorney General's Department.

Financial Support for Children

Both the mother or father have an obligation to provide financial support for their children. If the parents do not provide support voluntarily, the court can force them to make maintenance payments. The payments are made to the person who has custody of the children.

There are several statutes which provide that parents must pay child support. The age of the child, the marital status of the parents and the existence of any other court action will determine which Act a custodian will use to apply for maintenance. Maintenance is available under the following circumstances:

1) The child is the legitimate child of both parents and is under 16 years of age. In this situation, a claim for maintenance can be made against the legal father or mother under several Acts.

   (a) *The Infant's Act* — the court can order maintenance for the child under this Act provided there has been an application for custody.

   (b) *The Queen's Bench Act* — the court can order maintenance for the child under this Act provided there has been an application for judicial separation, annulment or alimony for the wife.

   (c) *The Deserted Wives' and Children's Maintenance Act* — the court can order maintenance for the child provided that he/she has been deserted. A child is considered deserted when:

   - the parent has not provided the child with the necessaries of life; or

   - the child is not living at home because the parent has neglected him/her or has been cruel to him/her.

   (d) *The Divorce Act* — the court can order maintenance for the child when it hears a petition for divorce.

2) The child is the legitimate child of both parents and is over 16 years of age.

   (a) *The Infant's Act* — the court can order the maintenance be paid until the child reaches 18, provided there has been a application for custody under the Act.

   (b) *The Queen's Bench Act* -- the court can order maintenance for any child until he/she reaches age 18. It can also order maintenance for a child who is over 18 in exceptional circumstances. For example, if a child is physically or emotionally handicapped he/she would probably receive maintenance after he/she reaches the age of majority. Child support is only awarded under this Act with an alimony order or an order for judicial separation or annulment of the marriage.

   (c) *The Deserted Wives' And Children's Maintenance Act* — if a child is between 16 and 18 and suffers from a physical or mental handicap so that he/she is unable to support himself/herself, the court will issue a maintenance order. It must also be shown that the parent has "deserted" the child.

   (d) *The Divorce Act* — a parent can be required to pay maintenance for as long as it is necessary, provided the child is unable to support himself/herself. Maintenance will be provided if the child is handicapped, and in some cases where the child is continuing his/her education.

3) The child is the child of only one parent.

   (a) *The Deserted Wives' and Children's Maintenance Act* — a mother can claim support for her child if the child is under age 16 and the father knows about the child. This provision applies whether the child is legitimate or not. Under this Act, support may only be claimed for the child of the woman, not the child of the man. If the husband has legally adopted the child, the child is treated as if he/she were the legitimate child of both parents.

   (b) *The Divorce Act* — a wife or husband can claim child support from the other spouse if the spouse stood *in loco parentis* to the children. For example, if the husband has acted as a father to the children, he is standing *in loco parentis*. The court will look at the following factors to determine if a spouse is standing *in loco parentis:*

   - if the spouse has given economic support to the children,

- if the stepparent has a close and affectionate relationship with the child, and/or
- if the spouse intended to take on the role of parent.

4) Claim against the biological father if the child is illegitimate.

   (a) *The Deserted Wives' and Children's Maintenance Act* — support can be claimed for a child under the age of 16 if the following criteria have been met:

   - the man and woman have lived together for at least one year, and
   - the person with custody brings an application within two years from the time the man and woman stopped living together or from the time the parent last gave support to the child.

   In this situation an order can be made against the mother or father.

   (b) *The Children of Unmarried Parents Act* — if a single woman has a child, she may bring "filiation proceedings" against the father. In a filiation proceeding, the mother must appear before a judge to prove that the man is actually the father of her child.

   When the judge has determined that the man is the father, the court can order him to pay one or all of the following:

   - the medical expenses resulting from the birth of the child;
   - maintenance for the mother for three months before the birth of the child and, after the birth of the child, for as long as the judge thinks necessary;
   - weekly or monthly payments for the support of the child. These payments will continue until the child reaches the age of 16, or is adopted or until the mother gets married; and/or
   - the costs incurred in obtaining the filiation order.

Enforcement of *The Children of Unmarried Parents Act*

If the father does not make the payments the mother can go before a judge to apply for a "warrant of distress." The warrant allows a sheriff to take the father's goods and sell them and give the proceeds of the sale to the mother.

The mother may also apply to the judge to bring the father before the court to show why he has not made the payments. If the father does not have a good reason, the court can order that the father go to jail for up to six months. However, the courts are reluctant to do this. If the father is in jail, he cannot earn any money to contribute to child support.

Limitations on the Operation of *The Children of Unmarried Parents Act*

A mother must bring filiation proceedings within one year after the birth of the child. (A mother does not have to wait until the child is born to file an application, she can apply while she is pregnant.) The time limit is extended in the following circumstances:

1) If the father has been contributing to the support of the child, the mother can bring proceedings within one year after the father last provided child support.

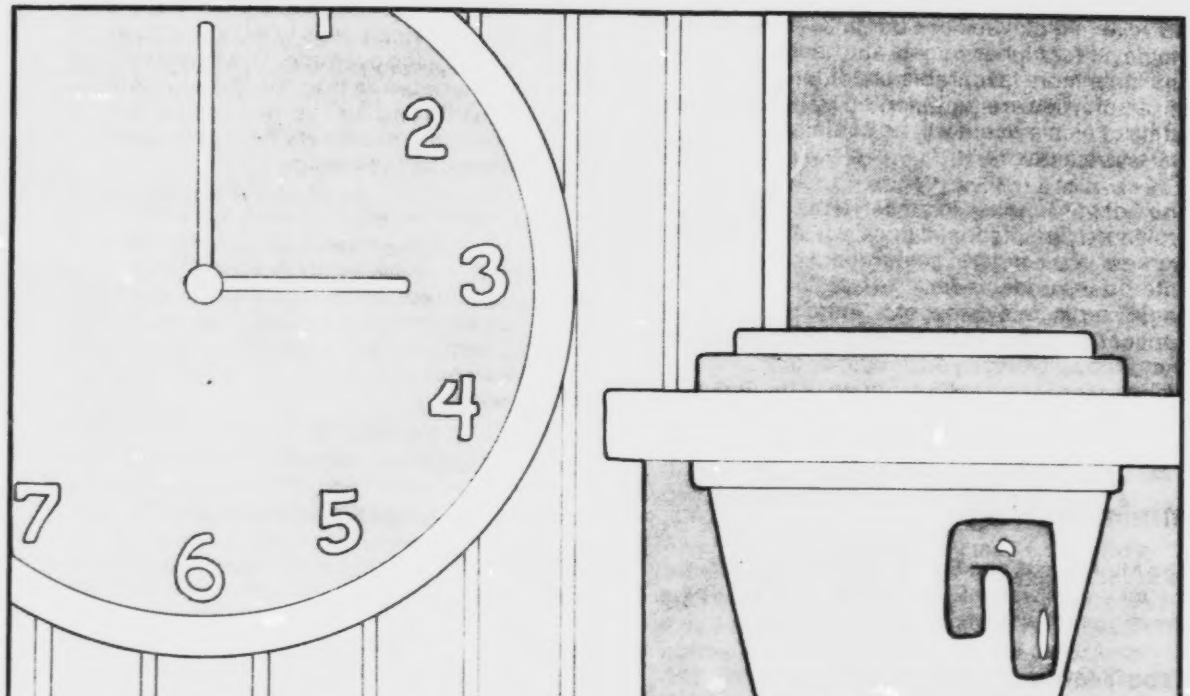
2) If the father and mother had been living together the mother can bring an application within two years after the parents stopped living together.

If the mother gets married she cannot bring proceedings.

Enforcement of Other Maintenance Orders

Court orders for child support are enforced in the same way as other maintenance orders. For further details on the enforcement of maintenance orders, see page 16.

Women as Employees



Women as Employees

The Labour Standards Act

The Labour Standards Act sets out the conditions under which an employee works. It deals with the minimum wage, hours of work, vacations, holiday pay and other matters relating to employment. These minimum standards must be observed by all employers. However, employees can bargain with their employer for higher wages, shorter hours or any other more favourable conditions. When the employees are represented by a union, the terms of employment will be contained in the collective agreement.

The Act only applies to employees under provincial jurisdiction. It does not apply to workers in the federal government or to enterprises under federal jurisdiction such as banks, radio, television, etc. Since the application of the Act is limited to employees, it excludes self-employed people and independent contractors; nor does the Act apply to those engaged primarily in farming, ranching and market gardening.

Minimum Wage

The Minimum Wage Board has the power to fix the minimum wage. Effective January 1, 1982, the minimum wage is $4.25.

Free Transportation for Female Employees

The Minimum Wage Board has ordered that the employer must provide free transportation for female employees who finish work between 12:30 a.m. and 7 a.m. This order applies to women working in hotels and restaurants, educational institutions, hospitals and nursing homes. It is a good idea to check with the Apprenticeship and Standards Division, Saskatchewan Labour to see if such an order has been made with regard to a particular employer.

Uniforms

An employer must supply uniforms to all employees working in hospitals, hotels, cafes, nursing homes and educational institutions where employees are required to wear uniforms. The employer must also pay for the cleaning and repair of uniforms. However, registered nurses are expected to supply their own uniforms.

Hours of Work

The Act provides that no employer can demand that an employee work for more than eight hours a day or 40 hours in a week. If an employee works more than this, she must be paid one and one-half times her regular hourly wage.

Overtime

If an employer wishes to conduct his/her business over a four-day work week, he/she can require the employees to work a 10-hour day without paying overtime. The employer must have permission from the Director of the Apprenticeship and Standards Division. Such permission is not necessary if the employee's union authorizes the change.

An employee can refuse to work more than four hours overtime in a week unless there is an emergency. An emergency is defined as a sudden occurrence which could not have have been foreseen by the employer. The employer is prohibited from taking action against an employee who refuses to work more than 44 hours a week.

Days of Rest

Under the Act, all employees normally employed for 20 hours or more per week are entitled to a rest period of 24 hours every seven days.

As of July 1, 1981, for those employees working in the retail trade industry, the Act provided for two consecutive days off, one of those days where possible a Sunday. To be eligible, the employee must work 20 hours or more per week in an establishment where there are more than 10 employees.

The Director may grant a permit exempting an employer from these regulations if he/she is satisfied they would work a hardship on the employer or employees.

Exemptions

The provisions dealing with hours of work do not apply to certain classes of people. Some of these are:

1) any professional practitioner, registered or licensed under a provincial Act;

2) any trainee or student who is learning a profession while employed;

3) some commerical travellers;

4) most occupations in the logging industry;

5) most employees in northern Saskatchewan;

6) driver salespeople selling and delivering dairy products, carbonated beverages or baked goods in the areas outside the cities or a five-mile radius therefrom;

7) car salespeople; and

8) government field workers.

The Apprenticeship and Standards Division of Saskatchewan Labour has precise information regarding who is covered by the Act.

Statutory Holidays

The Act provides that a full day's wages must be paid for the following statutory holidays: New Year's Day, Good Friday, Victoria Day, Dominion Day, Saskatchewan Day, Labour Day, Thanksgiving Day, Remembrance Day and Christmas Day.

If an employee works on a statutory holiday, she is entitled to wages for a normal working day plus one and one-half times the regular rate of pay for every hour worked.

If an employee works in a hospital, educational institution, nursing home, hotel or restaurant, she can be requested to work on the statutory holiday. The employee would then receive:

1) payment equal to two and one-half times her regular rate of pay; or

2) payment equal to one and one-half times her regular rate of pay and an extra day off with pay. The extra holiday must be granted within a four-week period during which the public holiday occurs.

Annual Holidays

If an employee has worked in the same place for one year, she is entitled to three weeks' holidays. When an employee has worked for the same employer for 10 accumulated years of employment, she should receive an annual holiday of four weeks. An accumulated year of employment means any year of employment that has been accumulated in consecutive periods that are separated by not more than 182 days.

An employee can take her vacation in one continuous period or she can take several shorter periods of not less than one week. Before taking her vacation the employee must notify her employer in writing. The notice must be submitted before the day on which the employee becomes entitled to take her vacation.

Where a public holiday occurs during an employee's holiday, the employee's vacation shall be increased by one working day. The employee will also receive the wages she is entitled to be paid for each such public holiday.

Holiday Pay

All employees who are entitled to an annual vacation receive holiday pay. For a four-week holiday, the employee will receive 4/52's of her total wages for that year or, if she has not worked for the full year, 4/52's of her total wages for the portion of the year she has worked. For a three-week holiday, an employee will receive 3/52's of her total wages for that year or 3/52's of her total wages for a portion of that year.

Holiday pay must be given to the employee during the 14 days immediately preceding the commencement of the holiday period.

An employer and employee may enter into a written agreement to the effect that, because of shortage of labour, the employee will not take the annual holiday to which she is entitled. This agreement must be filed with the Director of Apprenticeship and Standards Division. The employer shall, within 12 months after the date on which the employee becomes entitled to an annual holiday, pay to the employee the annual holiday pay to which she is entitled.

An employee is also entitled to holiday pay when her employment is terminated. This holiday pay is available whether the employee quits, is laid off or fired. The amount of payment is calculated by taking 3/52's (or 4/52's) of the employee's total earnings for the period of time when she did not take any holidays.

Payment of Wages

An employer must pay his/her employees at least once a month. When employment is terminated, for any reason, the employer must pay any wages owing within 14 days after the employee's last day of work.

When there has been a work stoppage due to an industrial dispute, the employer must pay all wages up to the date of the work stoppage on the day he/she would normally pay wages.

Any term of a contract which determines where or how an employee can spend her salary is of no effect.

If there is a disagreement between an employer and employee regarding the amount of wages owed, the employer must give written notice of the amount he/she thinks is owed. If an employee accepts this amount, she does not lose the right to claim the rest of the salary owed her.

When an employer goes bankrupt, wages owing to an employee have priority over all other debts of the employer. If an employer does not have enough money to pay all the wages in full, the money available will be divided among the employees. The amount each employee receives will depend upon how much is owing to her.

Termination of Employment

If an employer discharges an employee who has worked for him/her for at least three continuous months, he/she must give the required notice or pay in lieu. For the purpose of this section, continuous is defined as a period not interrupted by more than 14 days. An example can explain how this definition will affect the application of the section. An employee has worked for the same employer for two years. She is discharged and, therefore, she is entitled to two weeks' written notice. The employee is then rehired one month later. She works for two months and is laid off again. This time, she is not entitled to notice because she has not worked for three continuous months. For the purposes of this section, the period of employment starts over once the employee has been discharged for more than 14 days.

The length of notice or amount of pay to which an employee is entitled depends upon the length of time she has worked for the same employer. An employee is entitled to:

1) one week's written notice or one week's pay if her period of employment is less than one year;

2) two weeks' written notice or two weeks' pay if her period of employment is between one and three years;

3) four weeks' written notice or four weeks' pay if her period of employment is between three and five years;

4) six weeks' written notice or six weeks' pay if her period of employment is between five and 10 years; or

5) eight weeks' written notice or eight weeks' pay if her period of employment is 10 years or more.

Equal Pay for Similar Work

The Labour Standards Act provides that no employer shall pay a female employee less than a male employee (or vice versa) if both people do similar work in the same establishment under similar conditions requiring similar skill, effort and responsibility. This provision does not apply if the difference in wages is based on a seniority system or a merit system.

If an employer is violating this provision, he/she must increase the woman's salary; he/she cannot lower a man's salary to comply with the section, nor can an employer avoid the provision by removing all male employees from the job category.

Parental Leave

Maternity Leave

Every female employee is entitled to up to 18 weeks of unpaid maternity leave if she has worked for the same employer for 12 consecutive months. Such leave may begin **anytime** during the 12 weeks before the estimated date of birth. The employee must take at least six weeks' leave after the actual date of birth. However, if the employee and employer agree, the employee may return to work earlier than six weeks after the child's birth. Within these restrictions, leave can be taken in any combination of time before and after the estimated date of birth.

An employee on maternity leave can apply for maternity benefits under *The Unemployment Insurance Act*. For further information regarding these benefits, see page 50.

Notice
To obtain maternity leave the employee must give her employer a written application for maternity leave along with a doctor's certificate stating that she is pregnant and giving the estimated date of birth. The application must be submitted at least four weeks before the day on which the employee intends to commence leave. If notice is not given at the required time

an employee may still receive full maternity leave if there are bona fide (genuine) medical reasons that require the employee to cease work immediately. The employee must provide the employer with a medical certificate which indicates bona fide medical reasons for the necessity of immediate leave. The employee must take at least six weeks' leave after the date of birth, unless the employer and employee agree otherwise. Within these restrictions, leave can be taken in any combination of time before and after the estimated date of birth.

Extended Leave

If a woman has used her full maternity leave she may be granted up to six weeks' extra leave if, for medical reasons, she cannot return to work. She must give her employer a doctor's certificate stating that she cannot return to work.

A woman can also get extended leave in the case of a delayed delivery. If the baby is born later than the estimated date of birth the employee is still entitled to six weeks' leave after the actual date of birth.

An Employer May Require the Commencement of Maternity Leave

An employer may insist that a woman take maternity leave if her pregnancy is **unreasonably** interfering with the performance of her duties. She may be required to begin leave as early as three months before the estimated date of birth. If a woman is asked to take maternity leave she is entitled to the maximum 18 weeks of leave even if she has worked less than one year for the same employer. The onus is placed on the employer to prove that the pregnancy unduly interferes with the employee's performance of duties.

Reinstatement

Once maternity leave has been completed, the employee shall be reinstated in the same job or a comparable one at the same rate of wages. There shall be no loss of seniority, pension benefits or any other similar benefits accrued (earned) to the commencement of her leave. (She does not continue to accrue such benefits while on leave, however.)

To be reinstated, an employee must notify her employer at least 14 days before the day she intends to return to work. No employer is obliged to reinstate an employee until she gives proper notice.

Job Protection

No employer shall suspend, dismiss, lay off or otherwise discriminate against a pregnant employee without good and sufficient cause other than her pregnancy, temporary disability due to her pregnancy or because she has applied for maternity leave. This protection is provided by *The Labour Standards Act* to all pregnant workers, regardless of their eligibility for maternity leave (12 months' continuous employment with the same employer).

The employer is required to prove good and sufficient cause in any dispute over a pregnant employee's job status, e.g., an employee does not receive an expected promotion or her hours of work have been reduced or duties have been changed.

Paternity Leave

If an employee's wife or common-law spouse is pregnant, he may apply for paternity leave. Paternity leave is available to any employee who has worked for the same employer for 12 consecutive months. The employee may take up to six weeks' continuous leave at any time during the three months preceding and the three months following the estimated date of birth.

An employee must apply for leave in writing at least four weeks before the day on which he intends to commence the leave. If the employee does not submit an application at the required time he may still take up to six continuous weeks of paternity leave, however, the leave may only commence within three weeks after the child's birth.

All provisions dealing with reinstatement and job protection for pregnant employees also apply to paternity leave, however, there are no unemployment insurance benefits available to those who are taking paternity leave.

Adoption Leave

If an employee is adopting a child, he/she or both employees are entitled to take up to six continuous weeks' adoption leave. Adoption leave will start from the day the child is received.

An adopting parent must, if possible, submit an application for leave at least four weeks before the adoption of the child. Sometimes, Saskatchewan Social Services cannot tell the parents exactly when a child will be available for adoption. In this situation, the employee should give his/her employer the same length of notice that he/she received from Saskatchewan Social Services. For example, if they tell a person that a child will be available for adoption in 10 days, the prospective parent must give his/her employer 10 days notice before taking leave.

All provisions dealing with reinstatement and job protection for pregnant employees also apply for adoption leave, however, there are no unemployment insurance benefits available to those who are taking adoption leave.

Bereavement Leave

If there is a death in an employee's immediate family, he/she is entitled to up to five days leave without pay. The leave must be taken within the period commencing one week before and ending one week after the funeral. For the purposes of this section, "immediate family" means a spouse, parent, child, sister, brother, mother-in-law, father-in-law or common-law spouse.

After bereavement leave has ended, an employee has the right to return to the same job or a comparable one, without being subject to any disciplinary action. However, an employee will not receive wages or benefits for the days of work he/she has missed.

Enforcement of *The Labour Standards Act*

General Labour Standards

The Apprenticeship and Standards Division, Saskatchewan Labour, deals with all violations of the Act other than contraventions of the provisions dealing with equal pay and parental leave. When an employer has not observed some provision of the Act, an employee may make a complaint to the Apprenticeship and Standards Office in Regina or one of the district offices in Saskatoon, Moose Jaw, Prince Albert, Swift Current, Weyburn, Yorkton, North Battleford and La Ronge.

If there has been a violation of the Act, a standards officer will try to effect a settlement between the employee and the employer. If no settlement can be reached, the Apprenticeship and Standards Office will take the required legal action.

Equal Pay Provisions

If a woman is being paid less than her male co-workers, (or vice versa), she should report the matter to the Women's Division, Saskatchewan Labour, Regina, or to the local apprenticeship and standards officer who will forward her complaint to the Women's Division. An investigator will then look into the complaint and if there is a violation, try to bring about a settlement between the employee and employer. If the employer will not settle, the Women's Division may refer the matter to a board of inquiry set up by the Saskatchewan Human Rights Commission. This board has the power to order that an employee be compensated for wages she was deprived of through a contravention of the equal pay provisions.

Parental Leave

If an employee is not granted parental leave (maternity, paternity or adoption leave) when he/she is entitled to receive it, the matter should be reported to the Women's Division or to the local Apprenticeship and Standards Office. The complaint will then be investigated by the Women's Division. If the employee's job status has been jeopardized because of pregnancy or other parenting needs, that employee can request investigation.

Trade Unions

A trade union is an organization of employees formed for the purpose of collective bargaining. Collective bargaining is the process by which the trade union and the employer negotiate a settlement determining wages, hours of work, benefits and other working conditions.

Who has the Right to Belong to a Trade Union?

Section 3 of *The Trade Union Act* gives all employees in Saskatchewan the right to organize and to join a trade union. Section 3 states:

> "Employees have the right to organize in and to form, join or assist trade unions and to bargain collectively through a trade union of their own choosing; and the trade union designated or selected for the purpose of bargaining collectively by the majority of the employees in a unit appropriate for that purpose shall be the exclusive representative of all employees in that unit for the purpose of bargaining collectively."

Employees who work under federal jurisdiction (such as bank employees or radio and television workers) have the right to form unions under the Canada Labour Code.

Under *The Trade Union Act*, an employee is defined as any person who is working for an employer except those who:

1) exercise authority and perform management duties; or

2) act for the employer in a confidential capacity in employee-management relations.

Whether or not an employee falls within one of these exceptions depends on the specific circumstances of the case.

Joining a Union

If an employee takes a job in a place which is unionized, she must join the union within 30 days of being employed. Under *The Trade Union Act*, the union has the power to demand compulsory membership as part of its collective bargaining agreement. If the employee refuses to join the union, the union can demand the dismissal of the employee.

If an employee refuses to join the union as a matter of conscience based on religious training or belief, she may apply to the Labour Relations Board to be excluded from the union. If permission is granted, an amount equal to union dues will be paid to a charity mutually agreed upon by the union and the employee. If the union and the employee cannot agree, the Labour Relations Board will select a charity.

Organizing a Trade Union

If a person wishes to form a union, she should contact the Local Labour Council, the Saskatchewan Federation of Labour, a trade union or the Industrial Relations Branch, Saskatchewan Labour. These organizations can give advice and assistance on organizing a trade union.

The procedure for organization of a union will vary depending on the employees, the union and the workplace involved. However, *The Trade Union Act* sets out certain steps which must be followed in forming a union:

1) Before a union can represent the employees, it must have majority support. Majority support is 50 percent of the employees plus one within an appropriate unit. An appropriate unit is a group of employees who can suitably join together and bargain collectively. Employees will usually be asked to sign union membership cards to show their support for the union. A membership card will show that the union is authorized to represent the employee during employee-management negotiations.

2) Once the required number of employees have signed membership cards, the union may apply for certification before the Labour Relations Board. The application for certification will include the following:

   (a) the name of the trade union which will represent the employee;

   (b) the description of the bargaining unit (the group of employees which will be represented by the union); and

   (c) the membership cards signed by the employees.

3) When the Board has received the application, it will schedule a hearing. Both the employer and trade union have the right to be represented at the hearing. At the hearing, the Board will decide if the bargaining unit is appropriate for

collective bargaining. It will then determine if the trade union represents the majority of the employees. If two different trade unions are competing to represent the bargaining unit, the Board will decide which union (if any) has majority support.

The Board determines majority support by comparing the number of employees who have signed membership cards to the total number of employees within the appropriate bargaining unit. (The employer is obliged to complete a list of all the employees within the bargaining unit.) In special circumstances, the Board will order a vote to determine majority support.

A vote will be ordered when:

(a) a union has applied for a certification order; and

(b) the union shows that at least 25 percent but less than 50 percent of the employees in the bargaining unit have indicated that they support the particular union.

If the employees are already represented by a trade union, the Board has the discretion to refuse to order a vote. A refusal will occur only if the existing union clearly represents a majority of the employees or if a similar vote has taken place in the preceding six months.

4) If a trade union has majority support within the appropriate unit, it is the Board's practice to certify the union. However, the Board may dismiss any application if it has been made with the employer's advice or as a result of his/her influence.

Once a certification order is issued, the trade union has the right to bargain on behalf of the employees. Bargaining will be done by the negotiating committee. This committee is usually comprised of employees and a person hired by the union. The union also has the right to negotiate disputes and grievances with the employer, during working hours, without any deductions in pay.

When a trade union is certified, the employer and the union are obligated to bargain collectively. If either side refuses to bargain, they are violating the Act.

Protection for Employees Organizing under the Act

The Trade Union Act provides protection for employees when they are participating in union activity. The following practices are prohibited by the Act:

1) The employer may not question any employee as to whether or not they are supporting the union. The employer is also forbidden to spy on the organization of the union.

2) The employer is prohibited from discriminating against or discharging any employee because she is organizing or supporting a union. The employer also cannot hire people on the condition that they do not participate in union activity.

3) The employer cannot interfere with the selection of the trade union.

4) The employer is prohibited from undercutting union organization by adopting any of the following tactics:

   (a) threatening to close down or move a plant or business during a labour-management dispute;

   (b) denying or threatening to deny to an employee any pension rights or fringe benefits as a result of a lockout or strike;

   (c) causing a lockout or making any change in wages or other working conditions while any application is before the Labour Relations Board;

   (d) changing the wages or other conditions of work without bargaining collectively with the trade union when the majority of the employees are represented by a union; or

   (e) bargaining with a company-dominated union. A company-dominated union is one which is organized or supported by the employer. *The Trade Union Act* is designed to eliminate company-dominated unions because such unions often do not genuinely represent the employees in collective bargaining.

The Trade Union Act also states that trade unions and employees are prohibited from using force or threats to encourage membership in a union.

What Happens to Union Representation when there is a New Employer?

The Trade Union Act provides that if a business has been sold or transferred to a new employer, the certification order will apply to the new employer. This means that the new employer will be obliged to bargain collectively with the employees who are represented by the certified trade union. If a collective bargaining agreement is in effect when a new employer takes over, he/she is bound by the terms of the agreement.

Rescinding an Order for Certification

Employees may apply to the Labour Relations Board to rescind a certification order within a time specified in *The Trade Union Act*. If the rescission order is granted, the union no longer has the authority to represent the employees in collective bargaining.

An application for rescission of an order may be made where:

1) there is a collective bargaining agreement in effect during a period between 30 and 60 days before the anniversary of the effective date of the agreement; or

2) there is no agreement in effect during a period of 30 and 60 days before the anniversary date of the certification order.

The Collective Bargaining Agreement

A collective bargaining agreement sets out the hours of work, wages, benefits and other conditions under which the employee works. When the agreement is signed by both the union and the employer, both parties are obliged to comply with its terms.

If the employer or the trade union wishes to negotiate a new agreement, they must give written notice to the other party between 30 and 60 days before the expiry date of the agreement. When such a notice is given, the employer and the union have an obligation to begin bargaining.

Enforcing the Collective Bargaining Agreements

While the collective bargaining agreement is in effect, it will be enforced by the grievance procedure. If an employee has suffered loss through a violation of the agreement, she should contact the shop steward to file a grievance (complaint). The union will represent the employee and meet with the employer to correct the violation. If the dispute if not resolved, the matter will usually be referred to an arbitration board. The board will hear evidence from both sides and make a decision. The decision of the board is final and binding on both parties.

Each collective bargaining agreement will have a different grievance procedure. The shop steward or union representative will supply information about the specific procedure involved in filing a grievance.

Strikes and Lockouts

The Trade Union Act does not prohibit strikes or lockouts at any time. However, the Act does provide that any strike action must be preceded by a strike vote. The vote must be by secret ballot.

Most collective bargaining agreements provide that the union will not strike and the employer will not engage in a lockout while the collective bargaining agreement is in operation. Most strikes and lockouts occur after the agreement has expired and negotiations have broken down.

Enforcement of *The Trade Union Act*

If a union, an employer or an employee has violated the provision of *The Trade Union Act*, a complaint can be made to the Saskatchewan Labour Relations Board. The Board will hear from the injured party and the party accused of the violation. Each side has the right to be represented by a lawyer.

The Board will hear all the evidence relating to the incident and determine if the Act has been violated. If there has been a violation of the Act, the Board can issue an order correcting the violation, including:

1) an order requiring an employer to cease the violation, or

2) an order requiring the employer to reinstate an employee if she has been wrongly discharged. If the employee has been wrongly discharged, the Board can also order that the employer compensate the employee for any wages lost as a result of the wrongful discharge.

When the Board has made an order, it will be registered with the local registrar of the Court of Queen's Bench within 14 days. Once the order is registered it can be enforced like any other court order.

Sexual Harassment in the Workplace

What is Sexual Harassment?

Sexual harassment consists of any sexual advances made by a person in authority to an employee, with the implication that refusal of sexual favours will affect the worker's employment. Sexual harassment can be found in many forms; it can be obvious or subtle, verbal or physical. The following are examples of sexual harassment:

1) a person in authority makes it clear that the employee must provide sexual favours to keep her job or to get a promotion;

2) an employee is dismissed, demoted or denied a promotion as a result of refusing sexual favours; or

3) physical assaults, such as the deliberate touching, grabbing or pushing of an employee by a person in authority.

What Protection is Available for Victims of Sexual Harassment?

The law provides some protection for women who have been sexually harassed. One of the following situations may provide help for victims of sexual harassment.

1) **Unions.** If an employee belongs to a union, she should report any sexual harassment to her union representative. Often, collective bargaining agreements have clauses which prohibit or can provide protection for victims of sexual harassment. If one of these clauses has been violated, grievance proceedings can be initiated. The union will meet with management to demand that the violation be corrected and that the employee be compensated for any loss she has suffered as a result of the harassment.

2) **The Saskatchewan Human Rights Commission.** The Saskatchewan Human Rights Code prohibits discrimination in hiring, firing, promotion or conditions of work on the basis of sex. Some sexual harassment is a form of sex discrimination. A victim of sexual harassment may file a complaint with the Human Rights Commission. The complaint will be investigated and, if it is established that the Code has been violated, an investigator will try to settle the issue between the employer and the employee. If no settlement is reached, a board of inquiry will hold a hearing. When the board makes its decision, it can make any order it considers necessary to provide full compensation. For example, the board can order that an employee be reinstated and compensated for any loss of wages which were incurred as a result of the unjust dismissal. (For further information on the operation of the Human Rights Code, see page 4.)

Complaints may be filed before the Human Rights Commission free of charge.

3) **Criminal Courts.** If an employer has made physical advances towards an employee, he/she may have committed the criminal offence of indecent assault. The Saskatchewan Human Rights Commission can tell any employee if the harassment has been of the type for the basis of a criminal charge. If a criminal offence has been committed, the employee can contact the police to press charges.

Preventing Sexual Harassment

Sometimes incidents of sexual harassment can be stopped before they result in dismissal or demotion. The first time an employee is sexually harassed, she should reject the advances firmly and make it clear that she will not be intimidated. If the harassment continues, she should contact her union representative or the Human Rights Commission **before** she leaves her job.

To make her complaint more convincing, the employee should keep a record of all incidents of sexual harassment. The record should show a description of the type of harassment, the time, date, place and the person involved. If anyone witnessed the incident, he/she should sign the record. It is also a good idea to check with other employees to determine if they have been harassed. If they have, these incidents should be recorded also.

Responsibility of Employers

An employer can be held accountable for the civil misbehavour of his/her employees. If an employee is successfully charged with sex discrimination against a person under his/her supervision, under section 16 of The Saskatchewan Human Rights Code, the employer can be subject to civil proceedings for compensation by the victim.

Workers' Compensation

Workers' Compensation provides financial support, medical treatment and rehabilitative services for workers who suffer from injury or disease arising from the course of their employment. These benefits are provided by the provincial government under the authority of *The Workers' Compensation Act.*

Who is Covered by Workers' Compensation?

The Workers' Compensation Act applies to most employees who work in Saskatchewan. However, the Act does not apply to workers such as household servants, farmers, ranchers, teachers or outworkers. (An outworker is a person who works in his/her home or in a place not under the control of the employer.) Farmers and ranchers may apply to carry compensation, but it is not mandatory. However, an industry, employer or worker may apply to be brought within the scope of the Act. If an employee is not sure if she is covered by the Act, she should contact:

The Workers' Compensation Board
1840 Lorne Street
REGINA S4P 2L8
(Phone 565-4370)

When is a Worker Eligible for Compensation?

A worker is covered by the Act when she suffers from an illness or an injury which arises out of the course of her employment. Whether or not a disability can be said to arise out of the course of employment depends on the facts of the case. For example, if an employee breaks her arm while moving boxes at work she will receive compensation. However, if a worker has had a history of medical problems with her arm and then injures it at work, she might not be entitled to compensation or she might receive reduced benefits. The Workers' Compensation Board will make the final decision as to when a disability arises out of the course of employment.

If a worker is disabled for only one day, she will not receive compensation other than payment for medical aid.

How to Apply for Workers' Compensation

When a worker is injured at work she should notify her employer and the Workers' Compensation Board as soon as possible, but no later than six months from the date of her injury. A workers' report (Form 4) can be obtained from the employer or from the Workers' Compensation Board. When the employee sees her doctor, she should tell him/her that she is applying for worker's compensation. The doctor will then file an initial report with the Workers' Compensation Board. An employer must also send an accident report (Form 5) to the Board within three days after he/she becomes aware of the disability.

Procedure under the Act

When all the appropriate reports have been submitted, a claims officer will assemble the file and consider the case. If the worker is clearly entitled to compensation, the claims officer will initiate payment. If the case is more complicated, the case will be taken to the senior claims officer and through various channels thereafter.

If the disability complained of is a permanent one, the claims officer will refer the case to the Medical Department for an assessment and decision. The Medical Department will usually wait for one year or until the worker returns to work before making its decision. This allows the worker's condition to stabilize so that an accurate assessment of the disability can be made. If a worker's condition changes during this period, she should visit her doctor and tell the doctor that she has applied for compensation. The doctor will then send in the appropriate medical reports.

Appeal Procedure

If a claim has been rejected, the applicant will receive a written statement giving the reasons for the decision. The applicant then has a right to appeal the ruling. The Office of the Worker's Advocate has been established to assist workers in conducting their appeals. Any employee who wants advice or assistance in obtaining compensation should contact:

Office of the Worker's Advocate
1914 Hamilton Street
REGINA S4P 4V4
(Phone 565-2456)

Compensation Payments

The amount of compensation a worker receives will depend upon the kind of ailment she is suffering from. There are four categories of disabilities.

Permanent Partial Disability

Permanent partial disability occurs when an injured worker can carry on some kind of gainful employment but will have a remaining disability for the rest of her life.

The amount of the payment will depend upon the severity of the injury. There may also be a wage supplement if the worker cannot earn the wage she earned prior to her accident. If she is losing wages because she has not been able to return to her pre-accident employment, the Board may pay her a supplement which will be reviewed on the anniversary date on her injury.

If the claim was initiated before January 1, 1980 the benefits will consist of a monthly payment (tax free) for life. If the claim was made after January 1, 1980 the benefit will consist of a lump sum payment between $500 and $10,000. A worker may also receive a monthly payment which will amount to 75 percent of the difference between what the employee earned before the accident and what she could earn now. The payments will last until the employee reaches the age of 65.

Permanent Total Disability

Permanent total disability occurs when a worker is unable to continue with any kind of gainful employment because of her injury.

A permanently disabled person will receive a monthly payment which is equal to 75 percent of her average, pre-accident weekly wage. However, no matter how much the worker earned before her accident, she will not receive any less than $505 per month nor any more than $1,833 per month. These payments will continue for as long as the worker lives, **provided** the claim was made prior to January 1, 1980.

If the claim was made after January 1, 1980 benefits will only last until the worker reaches age 65. In addition, the worker will receive a lump sum payment between $500 and $10,000.

Temporary Total Disability

This disability is of a temporary nature; the injured worker recovers and returns to work. The worker will receive 75 percent of her wage (tax free) to a maximum of $22,000 per year (in 1980) until she returns to work or until she reaches age 65, whichever comes first. While receiving temporary compensation the employee is still earning seniority, holiday pay and sick leave.

Additional Benefits

The Workers' Compensation Board will pay for all medical treatments resulting from the injury. This includes treatments and consultations by chiropractors, osteopaths, naturopaths and podiatrists. The Board will also supply or repair dentures, eye glasses and artificial limbs.

Vocational rehabilitation is also available to workers whose disability prevents a return to their former employment. Rehabilitation may include counselling, on-the-job training, vocational training and academic upgrading.

Survivor Benefits

Where a worker dies from a disease or injury arising out of the course of her employment her dependents will receive the following payments:

Benefits for a Dependent Spouse

A dependent spouse will receive a monthly allowance equal to that which the worker would have received if he/she had survived and had been totally disabled. The payments will last for five years or until remarriage, whichever comes first. However, where the surviving spouse has dependent children, the payments will continue until the youngest child reaches age 16. The Board may also extend the payments beyond five years if undue hardship would result when the payments cease.

When a surviving spouse remarries, he/she will receive a lump sum payment equal to the lesser of:

1) two years benefits, or

2) the amount of compensation the spouse would receive had the five-year period continued.

In addition, the spouse will receive a monthly child allowance of $135 per child until the child reaches age 16. A surviving spouse may also take advantage of the counselling and vocational assistance which would have been available to the worker.

Benefits for a Dependent Common-law Spouse

A common-law spouse who has lived with the worker for two years preceding his/her death may, at the discretion of the Board, be paid the same compensation that a legal dependent spouse would receive. If a worker leaves a dependent legal spouse and a dependent common-law spouse, each spouse may receive partial compensation. How much each spouse would receive depends on the facts of the case.

Benefits for Dependent Children

If the worker does not leave a dependent spouse but there are dependent children, each child will receive a monthly allowance of $135 per month until he/she reaches age 16. Dependent children will receive this monthly allowance if both parents are dead or if the surviving parent is not classified as a dependent spouse. For example, if the parents were divorced and if the spouse was not financially supported by the worker, there would be no dependent spouse within the meaning of the Act.

The following benefits are also available to surviving children in certain circumstances:

1) An invalid child will receive compensation after he/she reaches age 16 for as long as he/she remains an invalid.

2) A dependent child who is furthering his/her education may receive compensation until he/she reaches age 21.

3) If both parents are dead, a child under age 16 may receive any additional lump sum which the Board considers appropriate.

Additional Benefits

In addition to the above allowances, the survivors will receive $1,000 to cover funeral expenses and a sum to cover the cost of transporting the body to the worker's usual place of residence (provided the transportation is within Canada).

Income Tax Deductions and Cost of Living Increases

All workers' compensation benefits are free from income tax deductions. Any compensation benefits which continue for more than a year will be increased annually as the cost of living goes up. The increase in the cost of living is measured by the Consumer Price Index. For example, if the Consumer Price Index showed that inflation rose by 10 percent from 1979 to 1980, a dependent child who received a monthly allowance of $135 in 1979 would receive $148.50 ($135 plus $13.50) in 1980.

Unemployment Insurance

Unemployment Insurance provides temporary income maintenance to people who are out of work. These benefits are available from local Canada Employment Centres to employees who have been laid off, are sick or on maternity leave.

Who is Covered by Unemployment Insurance?

Most employees who work at least 15 hours a week or earn 20 percent of maximum insurable earnings ($63 per week in 1981) are covered by Unemployment Insurance, provided they work in insurable employment. Employees who pay UI premiums are usually covered. The following people do not pay these insurance premiums and therefore do not have coverage:

full-time students,
some part-time workers,
people over age 65, and
most self-employed people.

There are four basic types of Unemployment Insurance: regular benefits, illnes benefits, maternity benefits and special severance benefits. Because an applicant's eligibility depends on the kind of insurance she applies for, each type will be dealt with separately.

Regular Benefits

Regular benefits are available when an employee loses her job. However, payments will not be made in all circumstances. If an applicant is unemployed because of a strike or lockout, she may not be eligible for benefits while the dispute lasts. If an employee quits her job without just cause or if she has been fired for misconduct, she may be penalized up to six weeks' benefits, depending on the circumstances. When added to the waiting period of two weeks, this may mean a wait of up to eight weeks. She must claim benefits right away regardless of the possible penalty. The penalty is imposed from the start of the claim, not the start of the period of unemployment and is considered as weeks of benefit paid.

Who is Eligible?

To be eligible for benefits a claimant must have worked for a certain length of time. She must have been employed for from 10 to 14 weeks within the qualifying period. The qualifying period is the past 52 weeks or since the beginning of the applicant's last claim for benefits, whichever is shorter. Those people who have applied for UI for a second time in the past year may have to have worked for 20 weeks within the qualifying period depending on how many weeks of benefit they received on the first claim. Employees who have recently entered the labour force after a two-year absence must also work for 20 weeks before applying for benefits.

Once an employee has qualified for benefits she must meet the following conditions to keep on receiving payments:

1) she must be able and willing to immediately accept any suitable job offer,

2) she must be actively looking for work, and

3) she must report any work or money earned while receiving weekly benefits.

Amount of Payment

An applicant will receive 60 percent of her average weekly earnings to a maximum of $189 per week in 1981. If a person earns extra money while she is receiving UI, a certain amount may be deducted from the weekly payment. If a claimant earns less than 24 percent of her weekly benefits, no reductions in payment will take place. Any money earned which amounts to more than 25 percent of the weekly payment will be deducted from the UI cheque. For example, if a person is receiving $100 per week from UI and she earns $30 in that week, $5 will be deducted from the week's UI cheque. When reporting the earnings an applicant should report the full amount earned (gross earnings). The appropriate deduction will be worked out by the UI agent. This does not apply in the case of sickness or maternity benefit. Earnings will be deducted dollar for dollar in those cases.

Waiting Period

Once a UI claim has been accepted there is a two-week waiting period during which the benefits are not payable, but during which the claimant must meet the conditions stated previously. A recipient of regular benefits can expect her first cheque about four to five weeks after applying for benefits.

If an applicant earns any money during the waiting period it will be deducted from her weekly benefit dollar for dollar.

How Long will Benefits Last?

An applicant can receive payment for up to 50 weeks on one claim, depending on the number of insured weeks she has and the unemployment rate in the area in which she lives.

Application

When applying for UI an applicant should have her Social Insurance Number and her Record of Employment if she has it. Every employer is legally obligated to send a Record of Employment to an employee within five days after the job has ended but this sometimes does not happen. If an applicant does not have the appropriate documents, she should apply for UI but she should explain why the proper forms are not attached. In urban areas claimants are required to file their claims in person at the Canada Employment Centre. In rural areas they may file by mail.

Illness Benefits

Sickness benefits are available if an employee is off work because of illness, injury or quarantine. An applicant does not have to be injured on the job to qualify for illness benefits.

Who is Eligible?

To be eligible for sickness benefits an employee must meet the following conditions:

1) She must have worked for 20 weeks within the qualifying period. The qualifying period for sickness benefits is the same as for regular benefits. If an employee is collecting regular Unemployment Insurance and then becomes ill she may apply for sickness benefits. However, she may not get full sickness benefits if she has collected regular benefits during the past year. If a woman is in this situation, she should contact her UI agent to determine how many weekly payments she can receive.

2) She must have a medical certificate signed by her doctor. A blank medical certificate can be obtained from any Canada Employment Centre.

3) She must have been or expect to be ill for at least eight days. Any applicant who is receiving temporary total workers' compensation is not eligible for UI, but she may be if she is receiving temporary partial compensation.

Amount of Payment

An applicant will receive 60 percent of her regular earnings up to a maximum of $189 per week in 1981. This payment will be reduced by the amount of earnings a claimant receives while she is getting Unemployment Insurance. The following are considered earnings:

1) Money paid by a group wage-loss insurance scheme. However, money from private sickness insurance is not treated as earnings.

2) Paid sick leave.

3) Temporary partial workers' compensation. However, any permanent pension from workers' compensation will not be considered earnings.

4) Vacation pay and pay in lieu of notice. However, severance pay, retroactive pay and disability, military or retirement pensions are not treated as earnings.

If an employee is receiving money from one of the above sources, she can still apply for UI if her earnings are less than her weekly UI benefit would be. However, an applicant is still considered to have used up benefit weeks whether she is paid all or part of her weekly benefit. Therefore, it is sometimes a good idea not to apply for UI until the last two weeks she will be in receipt of these monies.

If an applicant gets better but she does not have a job, she might be able to claim regular benefits. In this case she may need a second medical certificate to prove she is now ready to work and will have to meet the conditions stated in the section on regular benefits.

Waiting Period

As with regular benefits, no payments are made for an initial two-week waiting period. However, there is no waiting period in the following situations:

1) If an applicant has been collecting regular unemployment insurance, she has already served the two-week waiting period.

2) An applicant can serve her waiting period when she is still receiving sick pay or other insurance payments.

How Long Will Benefits Last?

An applicant can receive benefits to a maximum of 15 weeks. Whether or not she will receive the full 15 weeks of benefits depends on the type of illness and medical proof of incapability which may be requested by the UI agent from time to time. The more serious the illness, the longer benefits will last.

Application

An application for sickness benefits is made in the same way as an application for regular benefits. In addition, an applicant must produce a medical certificate along with her Record of Employment and her Social Insurance Number. If an employee is on paid sick leave, the employer does not have to send out a Record of Employment until sick pay terminates.

However, an employee can ask for the record at an earlier date. **She should not delay in applying for benefits because she does not have one or more of the documents required.** They will start processing the claim without the documents but no payments will be made until the documents are received. Sickness benefits may be applied for by mail if necessary in either urban or rural areas.

Maternity Benefits

A woman may claim maternity benefits if she is not working because of pregnancy whether or not she is returning to work.

Who is Eligible?

A woman will be eligible to receive maternity benefits if she meets the following requirements:

1) She has worked for 20 weeks within the qualifying period, and

2) She has worked for 10 weeks between the 30th and 50th week before the expected date of birth. An example will best illustrate how this test operates. A woman's baby is due the week of December 28, 1980. Thirty weeks before that is the week of June 1. Fifty weeks before the baby's birth is the week of January 13, 1980. The woman must have worked for 10 weeks between January 13 and June 1.

Sometimes a applicant is considered to have been in the work force if, during those 10 weeks, she was:

1) receiving Unemployment Insurance;

2) getting group wage-loss insurance, temporary total workers' compensation, paid sick leave or maternity leave;

3) unable to work because of pregnancy. In this case, a woman must have a doctor's certificate to prove that she was unable to work; or

4) on a training course approved by a Canada Employment Centre; or unable to work because of a labour dispute.

The weeks she received regular benefits will be deducted from her maternity benefits.

If, for one of the above reasons, the applicant has not been working for the required 10 weeks, she should contact a UI agent. He/she will determine if she is eligible for benefits.

Amount of Payments

The maternity benefit is 60 percent of the applicant's average weekly earnings, up to a maximum of $189 per week in 1981. Any payments (such as paid sick leave or maternity leave) an applicant receives from other sources will be deducted from her maternity benefits on a dollar-for-dollar basis. However, any benefits an applicant receives during the two-week waiting period will not be deducted provided the employer has registered for a SUBplan under UIC regulations.

Waiting Period

As with other benefits, an applicant must wait for two weeks before she will receive benefits. For example, if a woman applies for benefits 10 weeks before the baby's birth, she is eligible to collect benefits in the eighth week before the expected date of birth. She will receive her first cheque four or five weeks after the application is submitted.

How Long will the Benefits Last?

A woman is entitled to 15 weeks of maternity benefits. However, if she has received regular or illness benefits within the past 52 weeks, her maternity benefits may be reduced. A claim can be made at any time between the 10th week before the estimated birth date and the 17th week after the actual birth, but must be made within one week after the date of birth to be entitled to the full 15 weeks of benefit.

If a woman is forced to leave work at some time before the 10 weeks preceding the date of birth, she may be entitled to regular benefits. But the weeks she received regular benefits will be deducted from her maternity benefits.

If a woman has no job to return to after her maternity benefits end, she may apply for regular benefits. However, an applicant cannot collect regular benefits from eight weeks before the baby is due until six weeks after the birth. If a woman wishes to receive regular benefits she should call the Canada Employment Centre three weeks before maternity benefits end.

Often, a woman's old job may be protected by union agreement or *The Labour Standards Act*. If an applicant has the right to return to her previous job (or a similar job with the same pay and benefits) and she does not do so, she can collect regular Unemployment Insurance but will be subject to a penalty of up to six weeks' benefits for quitting her job. She will also have to meet the conditions stated in the section on regular benefits.

Application

An application for maternity benefits is made in the same way as an application for regular benefits. In addition, a woman must have a medical certificate stating that she is pregnant and when the child is expected to be born. Maternity benefits may be applied for by mail in either urban or rural areas.

Special Severance Benefits

These benefits are a three-week lump sum payment payable when an employee reaches age 65 and is therefore no longer insurable.

Who is Eligible?

To be eligible for this benefit a claimant must have worked for 20 weeks within the qualifying period. The qualifying period for special severance benefits is the same as for regular benefits. If an employee received UI in the last year, she must have worked at least 20 weeks since the start of the last claim. Claimants over 65 years of age are no longer eligible for other types of benefit.

Amount of Payment

An applicant will receive a lump sum payment equal to three times the weekly payment she would get if she were on regular benefits. That is, 60 percent of her regular earnings up to a maximum $189 per week in 1981 times three, up to a maximum total of $567 in 1981.

There is no waiting period applicable and a claimant does not have to meet the conditions stated in the other sections of this handbook. She could, in fact, still be working and collect the special severance benefit.

Application

Since her employer should no longer be deducting UI premiums once an employee reaches the 65th birthday, she should get a Record of Employment from her employer. Application is made in the same way as an application for regular benefits. Special severance benefits may be applied for by mail in either urban or rural areas. Applications should be filed as soon as possible after the claimant's 65th birthday.

Right of Appeal

If a claim for UI is refused, an applicant has the right to appeal. The applicant should first contact her UI agent. Sometimes the agent can change his/her decision immediately if new facts are provided. If the applicant is still dissatisfied, she may take the case to the Board of Referees which is independent of the UI office.

An appeal to the Board of Referees must be filed within 30 days after the applicant was notified of the UI agent's decision, stating why she wishes to appeal, any new information, whether she will attend the hearing or have a representative, and in which of the official languages she wishes the hearing to be held. The applicant will receive a letter stating the time and place of the hearing. An applicant has the right to speak or have someone speak for her at the hearing. If the Board does not change the decision, the case may be taken to the Umpire. Any decision of the Board of Referees may be appealed to the Umpire but the claimant must state her grounds for the appeal.

The Umpire is usually a judge of the Federal Court of Canada. Decisions of the Umpire are usually final, although some exceptional cases may be appealed to the Federal Court of Appeal or the Supreme Court of Canada.

As only general information is provided here, when a question arises, the local Canada Employment Centre should be contacted.

Income Security Programs for Retirement

The pension system can be divided into three levels. Level I consists of those programs which provide a guaranteed income level for everyone over 64 years of age. These are Old Age Security (OAS), The Guaranteed Income Supplement (GIS) and Spouse's Allowance. Level II is the Canada Pension Plan (CPP) and Level III is made up of private pension plans.

Old Age Security

The Old Age Security Pension is a monthly benefit paid to all persons 65 years of age and over who satisfy certain basic residence requirements. It is not necessary to be retired in order to be eligible.

Eligibility Requirements

Proof of Age Requirement
When a person applies for the pension she must prove her age with a birth or baptismal certificate, if either can be obtained. If a person does not have a birth or baptismal certificate in her possession but thinks that she could possibly obtain one, she should contact the Old Age Security Division of Health and Welfare Canada. This office can give information on how to obtain a birth or baptismal certificate. In cases where a birth or baptismal certificate cannot be provided, two or more documents may be required, such as a marriage certificate, Census and National Registration records, employment records, Naturalization, Immigration and Citizenship certificates.

Resident Status
In order to qualify for an Old Age Security Pension an applicant must:

1) be a Canadian Citizen immediately prior to the approval of the application,

2) be a legal resident of Canada immediately prior to approval of the application,

3) have been a Canadian Citizen or a legal resident of Canada immediately prior to the date that she ceased to reside in Canada.

All applicants must declare their resident status on the Old Age Security application form.

Persons who are Landed Immigrants, Naturalized Citizens or who have been issued a Certificate of Canadian Citizenship should send documentary proof of their status with the application form.

Residence Requirements for a Full Pension
A person may qualify for a full pension on reaching age 65 if she has resided in Canada, after reaching age 18, for periods that total 40 years. If she has not resided in Canada for 40 years after age 18 she may qualify for a full pension on reaching age 65 if she:

1) was 25 years of age or over on July 1, 1977, and

2) was resident in Canada, or

3) had some prior residence in Canada after age 18, or

4) was in possession of a valid Canadian Immigrant visa.

A person who meets these requirements may qualify for a full Old Age Security Pension if she meets the residence requirements in one of the following ways:

1) by having resided in Canada for the 10 years immediately preceding approval of the application; or

2) by having been present in Canada, after age 18 and prior to the start of the 10 years mentioned above, for periods that total at least three times the length of the absences during the 10 year period. In addition, a person must reside in Canada for at least one year immediately preceding approval of her application.

   Example: A person who have absences from Canada totalling five years between the ages of 55 and 65 must have been present in Canada between the ages of 18 and 55 for a total of at least 5 years. In addition, she must have resided in Canada from age 64 to age 65.

Some absences from Canada can be considered to have not interrupted residence or presence in Canada. These absences are:

1) temporary absences which are not associated with residence in another country, or

2) certain other types of absences from Canada associated with employment by Canadian government agencies or Canadian firms, international charitable organizations or work as a missionary.

All facts of such absences should be given by the applicant at the time she applies.

A person who does not meet the residence requirements for a full Old Age Security Pension can qualify for a partial pension, providing she meets the necessary residence requirements.

Residence Requirements for a Partial Pension
To be eligible for a partial pension a minimum of 10 years of residence in Canada after age 18 is required. A partial pension is earned at the rate of 1/40 of the full pension for each complete year of residence in Canada after age 18.

Example: A person who resided in Canada for 15 years between ages 18 and 55 and returned to Canada at age 63 would need to reside in Canada for an additional three years after age 65 in order to qualify for a full pension. Under the rules for a partial pension she could qualify for 17/40 of the full pension at age 65.

Once a partial pension is approved, the amount of the monthly pension will not be increased on the basis of the additional years of residence in Canada. A former resident of Canada with at least 20 years of residence in Canada would be entitled to receive a pension outside of Canada without returning to Canada.

Application

An Old Age Security Pension cannot be paid until an application has been made and approved. Application forms are available at all Canadian Post Offices and at Health and Welfare Canada, Income Security Programs Offices. A person should apply at least six months before becoming eligible for the pension. This will allow time for proof of age to be obtained and for the history of residence to be confirmed.

The application may be approved on the date on which the applicant meets the age, residence and legal residence requirements. All questions should be answered in full and a Social Insurance Number provided. Proof of age and, where required, proof of resident status should be sent with the application form. All documents will be returned once the application has been approved. Photocopies of documents are acceptable provided the copies have been certified as being true to the original by one of the following: Notary Public, Commissioner of Oaths, justice of the peace, lawyer, doctor, bank manager, teacher, accountant, social worker, municipal clerk, postmaster, Member of Parliament, Member of a Legislative Assembly or an official of a federal or provincial government department.

If a person has not obtained the required proof of age or, if necessary, proof of resident status the application should not be delayed since these documents can be forwarded at a later date. The applicant should explain that she is attempting to obtain the required documents and that they will be forwarded later.

If a person requires assistance in completing the application or wants further information about the Old Age Security Pension eligibility requirements, she should contact the nearest Income Security Programs Office.

Payments

Payment of the pension normally begins in the month following the month in which the applicant meets the age and residence requirements. For most applicants, this is the month following their 65th birthday. If a person is late in applying, payment can be dated back for 11 months prior to the month in which the application is received.

As of October 1980, the monthly amount of the pension is $196.83. If there is a rise in the cost of living, the pension is increased every three months in line with increases in the Consumer Price Index. Should there be no change in the Consumer Price Index or should it go down, the amount of the pension will not change.

Payments Outside of Canada
If a person has resided in Canada for 20 or more years after age 18, she is entitled to receive payments outside of Canada indefinitely once the application has been approved.

If a person does not have 20 years' residence in Canada after age 18, the pension can be paid outside of Canada for only six months following the month of departure. If a person does not have the required 20 years' residence in Canada at the time she starts to receive her pension, she can count her years of residence in Canada while receiving the pension to reach the 20-year total.

Change of Address
A person should notify the Income Security Programs Office of any change in address so there will not be an interruption of the pension.

Payment on Behalf of a Pensioner
A pensioner has a right to receive a pension whether she is living at home or in an institution. As long as the pensioner is managing her own affairs, the pension must be paid directly to her. However, if through infirmity, illness, or other causes a pensioner is considered to be incapable of managing her own affairs, the pension can be paid to a person or agency appointed by the Income Security Programs Office to act on the pensioner's behalf. Such a person or agency is required to account annually, and at the end of appointment, for benefits received and spent

Right to Appeal

If a pensioner is not satisfied that a decision made in her case is a proper one within the terms of the Old Age Security legislation, she has the right to appeal.

To make such an appeal, an applicant should get in touch with the Income Security Programs Office. Information will be provided regarding the appeal procedures.

Other Benefits Available

Guaranteed Income Supplement

A Guaranteed Income Supplement is a monthly payment added to the Old Age Security Pension of a pensioner who has no income or a small income.

Eligibility Requirements. Eligibility to receive a Guaranteed Income Supplement is determined by a pensioner's income and marital status. In the case of a married couple, entitlement to benefits is based upon the combined income of the couple. The income level under which a supplement can be paid increases as the Consumer Price Index goes up. The adjustments to the income levels are made every three months provided there has been an increase in the Consumer Price Index.

How to Apply. In order to receive a Guaranteed Income Supplement, it is necessary to complete an application form. An application form will automatically be sent to a pensioner shortly after her application for an Old Age Security Pension has been approved. Application forms are also available at all Health and Welfare Canada, Income Security Programs Offices and may be picked up in person or forwarded by mail upon request.

An applicant is required to state her marital status on the application form. If the applicant is married, a marriage certificate should accompany the completed application. If the applicant is unable to locate her marriage certificate, she should write to the church in which she was married or to the Registrar of Vital Statistics in the capital city of the province in which she was married.

An applicant is also required to report her income, if any, from the various sources listed on the application form for the year indicated on the application form. If the applicant is married, her spouse is required to report his income as well.

Common-law Marriages. In the case of a common-law marriage, a sworn statement is required to show: (i) that the pensioner and her partner have been living together and publicly presenting themselves as husband and wife for at least one year, if neither person has a legal spouse, (ii) if either person has a legal spouse, that the couple have been living together and publicly presenting themselves as husband and wife for at least three years. Should this situation apply, attach an explanation with the completed application forms and the appropriate forms for making a sworn statement will be sent out. Assistance can be obtained in making the statement of any Income Security Programs Office.

Payment. If a pensioner is applying for the first time and is found eligible ro receive a Guaranteed Income Supplement, a notice of the monthly amount of the payment and the date on which payment will begin will be sent to the pensioner. If she is not eligible, the notice will explain the reason for the ineligibility.

The amount of the Guaranteed Income Supplement will be combined with the Old Age Security Pension and the total paid monthly.

Renewal of a Guaranteed Income Supplement. Once a pensioner begins to receive a Guaranteed Income Supplement, it is necessary to reapply each year, in order that the Guaranteed Income Supplement will reflect changes in income from year to year. The beginning of each new supplement payment year is in April. Prior to then, a renewal application form will be sent to the pensioner on which she and, if she is married, her spouse will be required to report their income for the previous calendar year.

Changes in Marital Status. Any changes will affect the Guaranteed Income Supplement and should be reported immediately to the nearest Income Security Programs Office.

Payment Outside of Canada. Payment of a Guaranteed Income Supplement is possible while a pensioner is outside of Canada for up to six months. After six months, the benefit will be suspended. The benefit can be resumed upon return to Canada provided the pensioner re-establishes residence in Canada.

Spouse's Allowance

A Spouse's Allowance is a monthly benefit paid to spouses of people who receive Old Age Security pensions and Guaranteed Income Supplements. To be eligible the spouse must be between the ages of 60 and 65 and must satisfy the requirements listed below.

Proof of Age Requirement. The spouse applying for an allowance must show proof that he or she is between ages 60 and 65. The requirements for the form of proof of age are the same as for the Old Age Security Pension.

Residence Requirement. In order to qualify for a full Spouse's Allowance, the applicant must meet one of the residence requirements listed as a residence requirement for a full Old Age Security Pension.

People who do not satisfy the residence requirements for a full Spouse's Allowance may qualify for a partial Spouse's Allowance. The minimum requirement is a total of 10 years residence in Canada after age 18. The amount of a partial allowance is determined by: the number of complete years of residence in Canada after age 18, up to a maximum of 39 years, and the combined yearly income of the pensioner and spouse.

Resident Status. Each applicant for a Spouse's Allowance must be either a Canadian Citizen or legal resident of Canada when the application is approved.

Proof of Marriage. Proof must be submitted at the time that the Old Age Security recipient applies for a Guaranteed Income Supplement. If a married couple is applying for the Guaranteed Income Supplement and Spouse's Allowance at the same time, proof of marriage must, of course, be included with the applications.

Income Requirements. To receive a Spouse's Allowance it is necessary that the combined income of the couple be less than the income ceiling established for payment of an allowance. The pensioner and spouse will report their individual incomes on the application form for a Guaranteed Income Supplement.

Payment of Benefits. The Spouse's Allowance is paid as a right to the spouse of an Old Age Security/Guaranteed Income Supplement recipient. Payments normally begin the month following the month in which the applicant meets the age, residence and income requirements. If a person is eligible for an allowance, a notice will be sent out showing the month the benefit will begin and the monthly amount.

Cessation of Payment. Payment of a Spouse's Allowance ceases in the following situations:

1) when the recipient dies,

2) the couple divorce or separate,

3) if either of the couple is absent from Canada for over six months,

4) when the recipient reaches the age of 65, or

5) the income of the couple exceeds the allowance amount to qualify for the Guaranteed Income Supplement/Spouse's Allowance.

Renewal of a Spouse's Allowance. As with the Guaranteed Income Supplement, the Spouse's Allowance must be renewed each year to reflect changes in the couple's combined income. Further details are provided within the section dealing with renewals. (See page 54.)

Change in Marital Status. If there is any change in the marital status of a Spouse's Allowance recipient the nearest Income Security Programs Office must be notified immediately.

A Spouse's Allowance cannot be paid to spouses who have severed their relationship as husband and wife and live in separate dwellings.

A couple who become separated due to illness or family circumstances may continue to be eligible for a Spouse's Allowance and in such cases a written explanation of the circumstances should be provided to the Income Security Programs Office.

Death of a Pensioner. If a Spouse's Allowance was payable for the month in which the pensioner died, the surviving spouse may continue to receive payments until he or she reaches age 65 or remarries. Entitlement (the right to a Spouse's Allowance) is based on the personal income of the surviving spouse. The surviving spouse is not required to complete a new application for the payment year in which the pensioner died. An application form will be sent to the spouse to apply for each succeeding payment year.

Change of Address. The nearest Income Security Programs Office should be advised of any changes of address so that there will not be a disruption in receipt of benefit cheques.

Right of Appeal. If either spouse is not satisfied, after receiving an explanation, that the decision made is a proper one within the terms of the legislation, he or she has a right to appeal. To make such an appeal, the spouse should notify the regional Income Security Programs Office. This office will provide full information regarding the appeal procedure.

Information

Information concerning the Old Age Security, Guaranteed Income Supplement and Spouse's Allowance programs can be obtained at the Income Security regional Office:

Health and Welfare Canada
Income Security Programs
1975 Scarth Street
REGINA S4P 3K4
(Phone 359-5631)

The Canada Pension Plan (CPP)

The Canada Pension Plan, which started in January 1966 is a contributory social insurance program designed to help people who work in Canada by providing a basic level of protection in the event of retirement, disability or death. The plan operates in all parts of Canada except in the province of Quebec, which has its own similar pension program. However, the two plans are closely coordinated so that contributors are protected wherever they may work in Canada.

Coverage

The Canada Pension Plan covers nearly all types of employment in Canada on a compulsory basis. To have coverage for a particular year, however, a person must be between the ages of 18 and 70 and must have earnings above a minimum level called the Basic Exemption. The Basic Exemption in 1981 is $1,400. This figure is increased each year in line with the increase in average salaries and wages. Some types of employment are not covered, such as employment by a spouse or employment as an exchange teacher from another country.

For further information as to whether or not certain types of employment are covered, an employee should contact the District Taxation Office of Revenue Canada.

Contributions

A person makes contributions to the Canada Pension Plan on employment income only, which is salaries, wages or self-employment. Contributions are required only on that part of earnings between the Basic Exemption ($1,400 for 1981) and an earnings ceiling called the Year's Maximum Pensionable Earnings. The contribution rate for an employee is 1.8 percent with an equal contribution from the employer. A self-employed person contributes at a rate of 3.6 percent.

It should be noted that although contributions are deducted from only that part of the income between the Basic Exemption and the Year's Maximum Pensionable Earnings, the total earnings up to the Year's Maximum Pensionable Earnings are taken into account in benefit calculation.

Record of Earnings

Every employee or self-employed person who contributes to the Canada Pension Plan may request, once a year, to be informed of the amount of pensionable earnings shown to his or her credit in the official Record of Earnings. A record is maintained under the employee's surname and Social Insurance Number; therefore, an employee should ensure that T4 slips received from her employer show the surname and Social Insurance Number exactly as written on her Social Insurance Number card. In addition, income tax records for both employed and self-employed individuals should also show the correct Social Insurance Number and surname.

The amount of pensionable earnings recorded in the official Record of Earnings in any one year is referred to as a Pension Credit.

Special Provision

Division of CPP Pension Credits upon Termination of Marriage

Pension Credits earned by one or both spouses during their years of marriage may be divided equally between them upon marriage dissolution, that is, upon divorce or legal annulment.

To be eligible for a division of Pension Credits, the following conditions are required:

1) the legal termination of marriage must have taken place on or after January 1, 1978.

2) the spouses must have lived together for a minimum of 36 consecutive months during the marriage.

3) the legal termination must be recognized by Canadian law, and

4) an application must be submitted within three years after the marriage has been legally dissolved.

The agreement in a divorce proceeding does not override the right for division of Pension Credits by either spouse.

Benefits under the Canada Pension Plan

Benefits payable under the Canada Pension Plan are covered under three basic headings:

1) Retirement Pensions,
2) Disability Benefits, and
3) Survivors' Benefits.

A brief outline of these benefits is given below. However, if an applicant has any questions she should contact the nearest Canada Pension Plan District Office.

Retirement Pensions

Any person who has contributed to the Canada Pension Plan and reaches age 65 is eligible, upon application, to receive a monthly Retirement Pension.

On approval of the application, the pension is payable to the pensioner anywhere in the world.

Application. Application for a Retirement Pension can be made up to 11 months prior to the month of the applicant's 65th birthday, but it is best to apply for this benefit four to six months prior to reaching age 65.

A person should consider the following points when deciding whether to apply for the Retirement Pension as soon as she is eligible, or to delay the application and continue to make contributions to the plan:

1) If she decides not to work after age 65, then it may be to her advantage to apply promptly so that she can start receiving her pension as soon as she is eligible.

2) If she decides that she will continue to work after age 65, she may wish to postpone her application in order to continue contributing to the Plan and in this way possibily increase the monthly amount of her eventual Canada Pension Plan Retirement Pension.

3) She should be certain that postponing her application will be best for her. Even if she increases the amount of her monthly retirement pension by working and postponing her application, she should weigh her eventual gain against the loss of monthly benefit which she could have obtained by taking her pension at age 65.

4) She should also determine if she has made the necessary contributions to qualify her spouse and/or dependent children for Survivor's Benefits in the event of her death. If such is not the case, she may conclude that it is better to defer applying for her retirement pension regardless of the eventual gain or loss in her own retirement pension, until she can ensure Survivor's Benefits protection for her family.

When Payments Begin. A contributor is eligible to receive a Canada Pension Plan Retirement Pension as early as the month following the month of the contributor's 65th birthday, provided prior application has been made.

If a person applies after age 65, a monthly pension can begin the later of:

1) the 11th month preceding the month in which the application is received; or

2) the month following the month in which the contributor last worked and for which a contribution was made, or the month following the month in which the contributor reached age 65.

Amount of Retirement Pension. Generally, a pension can be calculated as 25 percent of the current value of the average monthly pensionable earnings during the entire period in which a person could have contributed to the Canada Pension Plan.

The maximum Retirement Pension payable for persons who contributed at the maximum level for their full contributory period is $274.31 per month for pensions paid in 1981.

When Benefits Cease. Benefits cease with the death of the pensioner.

Disability Benefits

Monthly Pensions are available for those contributors who became disabled within the meaning of *The Canada Pension Plan Act* before reaching age 65. Monthly benefits are also available for the dependent children of the disabled contributor.

Disability Pension

Who is eligible? Canada Pension Plan contributors are eligible for benefits if they:

1) are under the age of 65,

2) have been determined to be disabled within the meaning of the Act, or

3) have made the required contributions to the Plan for a minimum qualifying period.

If the contributor is eligible for Disability Benefits, dependents will also receive benefits.

A person is considered to be disabled for Canada Pension Plan purposes only if she has a physical or mental disability which is both "severe and prolonged." Severe means that an applicant is regularly incapable of pursuing any substantially gainful occupation. Prolonged means that the disability is likely to be long, continued and of indefinite duration, or is likely to result in death. An applicant will be required to provide evidence in order for the Canada Pension Plan Administration to decide whether Disability Benefits are available.

What is the Minimum Qualifying Period? In the case of benefits beginning in January 1976 or earlier, a person must have contributed to the Plan for at least five whole calendar years or several part calendar years totalling five whole years in the period January 1966 to December 1975 to qualify for benefits. If the Disability Benefits begins in the period February 1976 to January 1981, a person must have contributed for any five whole or part calendar years in the last 10-year period.

If benefits are to begin at any time after January 1981 other contributory conditions apply. These conditions are as follows:

1) February 1981 to January 1984 — five of the last 10 years plus one additional year;

2) February 1984 to January 1987 — five of the last 10 years plus two additional years;

3) February 1987 to January 1990 — five of the last 10 years plus three additional years;

4) February 1990 to January 1993 — five of the last 10 years plus four additional years; and

5) February 1992 to later — five of the last 10 years plus five additional years.

When Do Benefits Cease? Benefits cease when the pensioner recovers, returns to gainful employment, dies, or becomes 65 years of age. In the latter instance, the Disability Pension is automatically replaced by a Retirement Pension.

Dependent Children's Benefit

Children under age 18 of the disabled contributor are also eligible for benefits if they meet the following conditions:

1) they are the natural or legally adopted children of the disabled contributor or they were adopted in fact by the contributor, and

2) they have never been married.

The disabled contributor or the person having the custody and control of the disabled contributor's dependent children should apply on behalf of these children. If the child of a disabled contributor was eligible for benefits and has died before an application has been made, there is a special provision for the payment of benefits. The person who had the custody and control of that child at the time of death may apply within one year after the death and retroactive benefit payments may be made. The provision only applies where death occurred on or after January 1, 1948.

Dependent children of a disabled contributor who are between the ages of 18 and 25, or who subsequently became 18, are sometimes eligible for benefits. These children qualify for benefits if:

1) they had never been married at the time the contributor became disabled, and

2) they meet the requirements of the Administration concerning full-time attendance at school or university. Children over 18 who qualify for benefits should themselves submit an application.

Persons wondering whether or not they should apply for Disability Benefits under the Canada Pension Plan should contact their nearest Canada Pension Plan District Office.

Cessation of Benefits. For a child under age 18, benefits cease when the child reaches age 18. The child, however, may continue to be eligible if he/she is considered by the Administration to be in full-time attendance at school or university.

For a child age 18 or older, benefits terminate when the child reaches age 25 or is no longer considered to be in full-time attendance at school or university.

In addition, benefits for a disabled contributor's child of any age cease when the child is legally adopted, marries, dies or when the contributor is no longer entitled to a Disability Pension.

Survivors' Benefits

Survivors' Benefits are only available if the deceased contributor has made a valid contribution to the Plan for the following minimum qualifying period:

1) one-third of the number of years from January 1, 1966 or from the month following the month of the contributor's 18th birthday, to the month of death or the month in which the contributor began receiving a Retirement of Disability Benefits; or

2) 10 years; but

3) never less than three years.

Three types of benefits are available:

1) Death benefits payable to the estate.

2) A monthly pension for the surviving spouse, and

3) Monthly benefits for the dependent children.

Death Benefit

The Death Benefit is an amount payable in a lump sum to the estate of the deceased contributor. The amount of the Death Benefit will vary according to contributory earnings of the deceased contributor.

In 1981, the maximum Death Benefit payable is $1,470. Application for the Death Benefit should normally be made by the executor or administrator of the estate or by the person who is looking after the estate.

Surviving Spouse's Pension

A person who was married to a contributor and/or who was residing in a husband-wife relationship with a contributor immediately prior to the contributor's death should consider applying for a Surviving Spouse's Pension. To be eligible for a Surviving Spouse's Pension, the surviving spouse must be:

1) age 45 or over, or

2) if under age 45 and not disabled, the surviving spouse must be maintaining dependent children of the deceased contributor.

If the surviving spouse is under age 45 at the time of the contributor's death and is not disabled and is not maintaining dependent children of the deceased contributor, the pension would be reduced by 1/120 for each month the surviving spouse was under age 45. This means that a spouse under age 35 who is not disabled and is not maintaining depedent children of the deceased contributor and who does not subsequently become disabled, will not be entitled to a pension until reaching age 65.

Common-law Unions. Under certain conditions, a common-law spouse may be qualified to receive a Surviving Spouse's Pension. A common-law spouse may receive a pension if:

1) neither the deceased contributor nor the surviving common-law spouse were prevented from marrying due to a previous marriage; they must have lived together as husband and wife for a period in excess of one year, or

2) either person was prevented from marrying due to a previous marriage; they must have lived together for more than three years. In this case, the benefit may be awarded to the legal or the common-law spouse, depending on the circumstances.

Note: Common-law marriages are not recognized for the Division of Pension Credits. This means that if a contributor has lived with a person for more than three years, the pension credits earned by one or both people will **not** be divided equally between them if they split up. Each person will keep the pension credits he or she has earned.

When Do Benefits Begin? Payment of a Surviving Spouse's Benefit can begin only after a written application has been submitted and approved. The Benefit is normally effective the month following the month of death. If application is not made within one year from the date of death, a loss of benefits could result as payments cannot be made retroactively for more than 11 months prior to the month in which the application is received.

When Do Surviving Spouse's Benefits Terminate? Benefits for a surviving spouse will cease with:

1) payment for the month in which the surviving spouse dies, or

2) payment for the month in which the surviving spouse remarries.

Note: If the person's second spouse dies, the surviving spouse then becomes eligible for a pension equal to the one discontinued or the one that may be payable as a result of the death of the second spouse, whichever is greater.

Amount of Surviving Spouse's Benefit. For a surviving spouse under age 65, the benefit is made up of a flat rate component plus 37.5 percent of the calculated value of the deceased contributor's Retirement Pension. The maximum Surviving Spouse's Benefit payable in 1981 is $165.78 per month.

For a surviving spouse over age 65, the benefit is calculated at 60 percent of the calculated Retirement Pension of the deceased contributor. The maximum payable in 1981 is $164.59 per month.

Combined Benefits. If a surviving spouse has also made contributions to the Canada Pension Plan and becomes eligible to receive a Disability Pension or Retirement Pension, a combined benefit may be received up to a ceiling set by the legislation. Combined benefits cannot exceed the maximum Retirement Pension payable ($274.31 in 1981).

Orphan's Benefits

Orphan's Benefits are available for dependent children of the deceased contributor who:

1) have never been married,

2) are the natural or legally adopted children of the contributor, or

3) were adopted in fact by the contributor.

For orphans under age 18 application should be made on behalf of the children by the persons having custody and control of these children. Orphans age 18 to 25 may themselves apply for Orphan's Benefits if they are in full-time attendance at school or university. The amount of the Orphan's Benefit is a set monthly amount for each child ($62.91 in 1981). Payment of an Orphan's Benefit is normally effective the month following the month of the contributor's death. Retroactive payment cannot be made for more than 11 months prior to the month in which the application is received.

When Do Benefits Cease? For a child under age 18, benefits cease when the child reaches age 18. The child, however, may continue to be eligible if he/she is considered by the Administration to be in full-time attendance at school or university.

For a child aged 18 or older, benefits terminate when the child reaches age 25, or is no longer considered to be in full-time attendance at school or university.

In addition, benefits for an orphan of any age cease when the child is legally adopted, marries or dies.

Application

Canada Pension Plan Benefits are not paid automatically. If a person thinks that she might qualify for a particular benefit or benefits, she should make application to the nearest Canada Pension Plan District or Local Office.

When a person who was otherwise eligible for a CPP benefit has died without applying for that benefit, the family or estate may apply within one year after the death and retroactive benefits payments may be made. This provision only applies where death occurred on or after January 1, 1978.

Taxation

All benefits from Canada Pension Plan are considered as income for Income Tax purposes.

Increase in Benefits

Once approved, monthly benefits are subject to an annual increase if the cost of living has risen during the past year. Benefits are payable for as long as eligibility continues regardless of where the beneficiary may live.

Private Pension Plans

Private pension plans are plans which are established and administered privately by individual employers. In every pension plan, contributions are paid into a fund. The employer always contributes to the fund and the employee is sometimes required to contribute. The fund is invested and pensions are paid out of the fund when each member of the plan retires.

Kinds of Pension Plans

Although the terms of pension plans will differ, most plans fall within one of four different types. Pension plans are usually classified according to the kind of contributions that are required or the kind of benefits that are provided. The different types of plans are as follows:

The Money Accumulation Plan

In this plan, the amount of the contribution is specifically stated. For example, the employee may be required to contribute five percent of her earnings and the employer may match that amount or pay a larger or smaller amount as set out in a contract.

Once the employer and the employee have made their contributions, they are accumulated with interest in a pension fund. The accumulated money in the fund will be used to provide a life annuity payable from the pension fund or used to purchase a life annuity from an insurance company. The insurance company guarantees to pay a monthly income for the balance of the annuitant's lifetime. Under *The Pension Benefits Act*, all annuities must provide a income for a lifetime. This annuity may, however, be guaranteed for a specified number of years. In this case, if the annuitant dies during the guaranteed period, the income will be paid to his/her named beneficiary (i.e., his/her surviving spouse or estate) for the balance of the guaranteed period or one lump sum payment.

Under a money purchase plan, the employer's only obligation is to make the required contributions. The employer does not guarantee that the plan will provide a certain amount of pension on retirement. The amount of the pension will depend upon the amount of interest earned on employee and employer contributions and on annuity rates at the time of retirement An annuity can be purchased that will increase each year to offset a percentage of the increased cost of living.

Defined Benefit Plan

Under defined benefit plans, the employee will receive a specific pension benefit upon reaching retirement age. The pension benefit will be calculated according to a formula. For example, a plan may guarantee a monthly pension equal to $20 per month multiplied by the employee's years of service; or a plan may provide an annual pension equal to two percent of the employee's average earnings multiplied by her years of service. There are basically three kinds of defined benefit plans:

1) Flat Benefit Plan
Under this plan, the pension benefit will be increased by a specific amount with each year of employment. A plan which guarantees a monthly pension of $20 per month multiplied by the employee's years of service is a "flat benefit plan." For example, if an employee contributed to this kind of plan for 30 years, she would receive a pension of $600 per month at retirement. (Calculation: $20 x 30.)

2) Career Average Plan
Under this plan, the pension benefit will be increased by a percentage of the employee's yearly earnings with each year of employment. A plan which provides an annual pension equal to two percent of the employee's average career salary for each year of service is an example of a career average plan.

   Thus an employee whose total career earnings over 25 years of service equals $100,000, her average yearly earnings would then be $100,000 divided by 25 years or $4,000 average annual salary. If she earned a two percent unit for each year of service, her pension would be two percent x 25 years of service x $4,000 = $2,000.

3) Final Average Plan
The benefit is determined in the same manner as under a Career Average Plan except the salary used is the average salary over a much shorter period such as the last five years of employment or highest six years of earnings.

Under a defined benefit plan, the employee usually contributes a fixed amount or a fixed percentage of salary until retirement age. The balance of the contributions required to purchase the pension must be paid by the employer.

Some defined pension plans are indexed to all or a portion of the cost of living.

Women and Pensions

Ideally, every person should be able to purchase a pension which will adequately provide for his/her needs upon retirement. However, in practice, many pension plans do not provide a suitable living allowance. Women in particular are affected by the inadequacy of public and private pension plans. In 1975, the Canadian Council on Social Development estimated that at least 51 percent of unattached women between 65 and 69 live in poverty.

There are several reasons why women often receive very low pensions:

1) When a woman is a full-time homemaker, she is not earning wages. She will not contribute to a private pension plan or to the Canada Pension Plan. If her means of financial support is her husband's pension, it may be cut off when her husband dies. On and after July 1, 1981, *The Pensions Benefits Act* requires husbands to take their pensions in a manner that will provide their widows with a pension equal to at least 50 percent of the deceased husband's original pension and vice versa.
2) The majority of working women have low-status, low-paid jobs. In 1979, 50 percent of all working women were in clerical or service occupations. Under many pension plans, the pension benefit will be based on a percentage of the employee's earnings. This means that a woman with a low-paying job will often receive a small pension.
3) Most pension plans stipulate that an employee must work for a certain number of years before she will receive a pension. Many working women leave their jobs before they are entitled to receive pensions. Women often interrupt their careers to raise families or they change jobs when their husbands move. These interruptions in employment often deprive women of pension benefits.
4) The cost of living is increasing rapidly and many pensions do not provide a sufficient living allowance for retired employees because they are not indexed. Since women often receive small pensions to begin with, they are hit hardest by the rising rate of inflation.

The Pension Benefits Act

The Pension Benefits Act is designed to provide some measure of protection for people who belong to pension plans. The Act sets out certain minimum standards which every employer-sponsored or union-negotiated pension plan must meet.

Who is Covered by the Act?

The Pension Benefits Act applies to every employer who provides a pension for employees in Saskatchewan. Recent amendments to the Act, have expanded the definition of the employer to include employers who participate in "multi-employer" pension plans. Multi-employer pension plans cover schemes such as pension plans operated by an employer association or pension plans which have been set up through union-management negotiations and are administered by a board of trustees.

What Standards are set out in *The Pension Benefits Act?*

The Right to a Pension

When an employee has a vested right to pension benefits, she has earned the right to the benefits purchased on her behalf by the employer. If the pension is not "vested," an employee who leaves her job will only receive her own contributions plus interest in a lump sum. She has no right to the employer contributions made on her behalf, nor will she receive a pension on reaching retirement age.

Under the amendments to *The Pension Benefits Act*, vesting and pension entitlement will take place when she has completed at least one year of service and the sum of her age and service equal at least 45. For example, full vesting will occur at age 35 with 10 years service, age 40 with five years service and everyone requires full vesting after attaining age 44 with one year of service.

It should be remembered that the above requirements stipulate the latest date at which an employee is entitled to receive a deferred pension should termination of employment occur prior to retirement. Any pension plan may provide that an employee can receive entitlement to a deferred pension at an earlier age or with fewer years of service.

Even when an employee's contributions are locked in, the Act provides exceptions whereby an employee can receive some of her money locked in pension benefits in a manner other than as an immediate or deferred life annuity. The exceptions are as follows:

1) An employee, upon terminating her employment or membership in the plan prior to retirement, may receive a lump sum cash payment of up to 50 percent of her contributions with accrued interest. This option is not available where employees are not required to make contributions to their plans.

Under this provision, the employee still receives a pension on reaching retirement age. One-half of her contributions remain in the pension fund with her employer's contributions. The amendment to the Act will stipulate that every employer must pay at least 50 percent of the employee's pension. Even if an employee withdraws half of her contributions, she will still receive at least 75 percent of her pension on reaching retirement age.

When a person changes jobs, she may need a lump sum to meet the expenses of moving or to pay for necessities until she is established in a new position. This provision is designed to help employees meet the cost of changing jobs.

2) *The Pension Benefits Act* provides that an employee who is terminating her employment may transfer some of her contributions to another retirement income plan. The employee may withdraw all contributions in excess of those required to purchase up to 50 percent of her pension. It is important to remember that this sum may only be transferred to another retirement income plan. This amendment is not designed to give the employee a cash refund on her pension contributions.

This provision is especially important for employees who change jobs frequently. Even if an employee is entitled to receive a pension at retirement, she will not necessarily receive a large pension. Pension benefits usually increase with the number of years worked. If an employee has not worked for the same employer long enough to receive a substantial pension, this provision will be of assistance. An employee can make use of a lump sum to join a new pension plan when her employment terminates.

3) The last exception to the locking-in provisions provides that on termination of employment an employee may receive the cash value of her pension if the pension payment is less than $25 per month payable at retirement.

Interest Rates on Employee's Contributions

Many employees have found that upon termination of employment or death, an extremely low rate of interest is paid on lump sum refunds. The interest allocated on employee contributions has sometimes been as low as four to five percent. In addition, some plans do not calculate interest until the end of the fiscal year following the year in which contributions were made.

The amendments are designed to ensure that the employees receive a fair reurn on their contributions. The new regulations will set the minimum interest rate to be credited to employee contributions and stipulate when the interest will be calculated. It is anticipated that the minimum rate of interest to be allocated to employees' contributions will be based on the 10-year average yield on long-term Canada Bonds.

Pension for Spouses

The financial position of elderly women who have not worked outside the home is particularly difficult. Because they have not been in the labour force, they are not entitled to an allowance under the Canada Pension Plan, nor have they contributed to private pension plans. Many of these women are left destitute when their husbands die, because the pension benefits cease with their husbands' death.

The Act stipulates that a surviving spouse will receive at least 50 percent of the employee's pension, if the employee dies after retirement. A retiring employee can choose a pension plan that does not provide for a surviving spouse, if the spouse waives her right to receive the pension. The waiver must be signed by the spouse before a witness without her spouse being present. The waiver must also contain a statement that the spouse is aware of her right to pension benefits and intends to waive that right.

The same problems can also arise when a woman is separated or divorced from her husband. Under the Act, pension benefits can be distributed by court order or by an interspousal agreement on marriage breakdown.

What Happens when an Employer Puts the Plan in Jeopardy?

An employer may stop making contributions to a pension fund for several reasons. For example, the employer may discontinue his/her business or merge with another company. In these situations, the Superintendent of Pensions has the authority to protect the employee's interests. The Superintendent of Pensions can be contacted at:

Pension Benefits Division
Saskatchewan Labour
1914 Hamilton Street
REGINA S4P 3V4
(Phone 565-2458 or 565-2459)

The member's interests will be further protected by a new section of the Act stating that all contributions to a pension plan must be held in trust by the employer. It is anticipated this provision will place monies owing a pension plan very high on the priority list when a bankrupt employer's assets are distributed.

What Should an Employee Know About her Pension Plan?

When a person contributes to a pension plan, she should know exactly what benefits she will receive when she reaches retirement. Answers to the following questions should give the employee a good idea about what benefits she will receive:

1) What is the type of pension plan?

2) Is it indexed to the cost of living?

3) How much does the employer contribute? How much does the employee contribute?

4) Who is the administrator of the plan? Who holds the pension fund and where is it held? What was the investment return on the contribution during the last fiscal year?

5) Is the pension fund sufficient to guarantee the pension earned to date? If not, what is the outstanding amount and when will it be paid?

6) What happens if the employee becomes disabled? Do contributions (from the employer and employee) continue during the period of disability? What happens if the employee leaves her job before normal retirement age? What are the termination benefits?

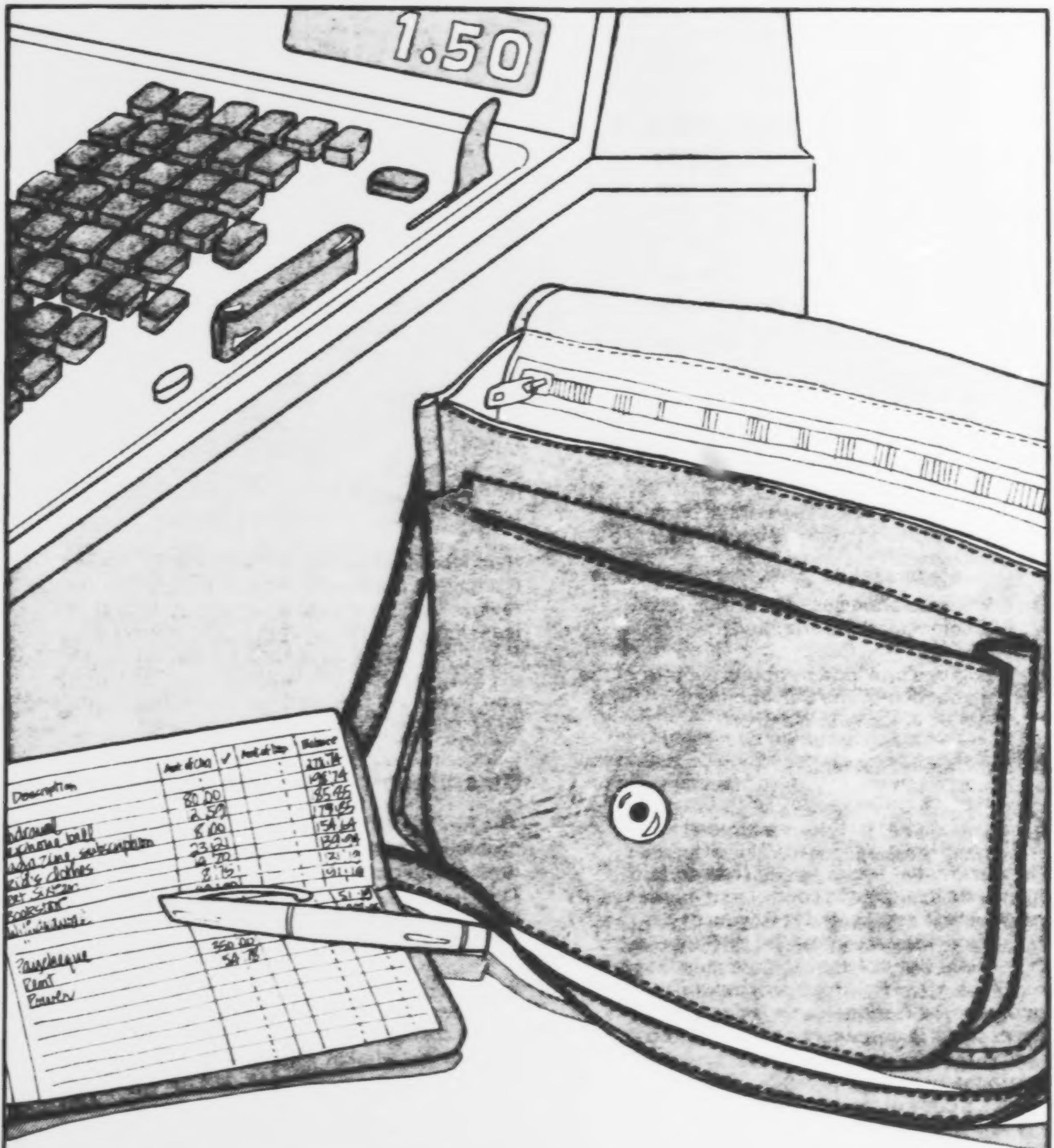
7) What are the early retirement provisions?

8) What are the death benefits if the employee dies before retirement?

9) When does the employee become entitled to a pension? When does she have a right to employer contributions made on her behalf?

10) What are the provisions for the surviving spouse, before retirement and after retirement?

Women as Consumers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Description
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Rent
Power

Women as Consumers

Landlord-Tenant Relations

When a woman rents a house or other dwelling, she becomes a tenant. The person who owns the building is the landlord. Both the landlord and the tenant have certain rights and obligations which are set out in the legislation. For example, a tenant has an obligation to pay the rent; a landlord has an obligation to repair the building. Most landlord-tenant relationships are covered by *The Residential Tenancies Act*.

The Residential Tenancies Act

The Residential Tenancies Act deals with the renting of most residential premises in cities, towns, villages or hamlets. The Act will also apply to mobile homes within a five-mile radius of any city, town, village or hamlet.

The Act deals with many different kinds of living accommodations. These are:

1) apartments or houses which are used as residences; or

2) mobile homes or land which is rented as a site for mobile homes.

There are a few types of residential premises which are excluded from the operation of the Act. These are:

1) business premises with living accommodations attached;

2) lodgings provided by hotels, motels, clubs or supplied by the Salvation Army, YMCA, YWCA, or Canada West; or

3) university residences.

Rent

The Residential Tenancies Act has certain provisions designed to control rent increases. If the premises are located in Regina or Saskatoon, they are governed by Rent Control. Under Rent Control, the landlord must apply to the Office of the Rentalsman for a rent increase. The Rentalsman will not permit any increase if it is unreasonable. The landlord should apply to the Rentalsman three months before the proposed increase. The tenant will receive a copy of the landlord's application. If any rent increase is allowed, the Office of the Rentalsman will notify the tenant at least one month before the rent increase takes effect.

The above provisions do not apply to the following:

1) any building constructed after October 1975,

2) a house which is rented by only one tenant and which is the only house the landlord rents, or

3) a house with two residential premises where the landlord lives in one of the premises.

If the tenant lives in one of the following centres, she may be protected by the rent review provisions in the Act. Rent review is in effect in: Assiniboia, Battleford, Biggar, Canora, Esterhazy, Estevan, Hudson Bay, Humboldt, Kamsack, Kindersley, Lloydminster, Maple Creek, Meadow Lake, Melfort, Melville, Moose Jaw, Moosomin, Nipawin, North Battleford, Prince Albert, Rosetown, Shaunavon, Swift Current, Tisdale, Unity, Uranium City, Weyburn, Wynyard and Yorkton.

If the premises are governed by the rent review provisions, the landlord must give the tenants at least three months' written notice of any proposed increase in rent. If a tenant thinks the increase is unreasonable, she may apply to the Provincial Mediation Board for a review of the rent increase. The application must be made within 30 days of receiving notice of the rent increase. In these cases, the decision of the Mediation Board cannot be appealed.

Rent increases are limited to one in 12 months. If premises are exempt from rent control or rent review, landlords must give their tenants at least three months' written notice of any rent increases. These increases are limited to one every 12 months. The landlord must also inform new tenants of past rent increases and the date when the next increase will be allowed.

Other Restrictions

The Residential Tenancies Act has also prohibited certain practices used in collecting rent. A landlord cannot:

1) ask for a series of post-dated cheques at the beginning of the tenancy;

2) insist on all rent being paid in advance at the beginning of the tenancy. For example, if a tenant rents a house on a monthly basis, the landlord can demand payment for one month but not for six months; or

3) have the tenant's property seized to pay for rent which is due.

Security Deposit

The maximum amount a landlord can demand as a security deposit is the lesser of

1) $125.

2) half a month's rent if the tenant rents on a monthly basis, or

3) one week's rent if the tenant rents on a weekly basis.

The security deposit must be returned 10 days after the tenancy is terminated. The landlord must also pay interest on the security deposit at the rate of 10 percent per year.

If a landlord wants to claim all or part of the deposit, he/she must, within 10 days after the end of the tenancy agreement, write the tenant indicating the amount claimed and the reasons. If the tenant does not agree within 10 days, the landlord must send the money to the Provincial Mediation Board and apply for settlement.

Condition of the Building

The landlord has an obligation to keep the premises in good state of repair. This obligation exists even if the tenant rented the premises when they were in a state of disrepair. The landlord is also obliged to provide hot and cold running water, heat and power and any other services listed under the tenancy agreement. The landlord must also comply with all health, safety and zoning regulations.

A tenant is responsible for the ordinary cleanliness of the premises. This responsibility extends to the exterior of the house unless the tenancy agreement provides otherwise. The tenant must also repair any damage caused by her neglect or intentional misconduct. Failure to keep the premises in a good state of repair may result in eviction.

Right to Privacy

The tenant has a right to "quiet enjoyment" of her premises. This means that the landlord cannot allow anyone to disturb the tenant's right to live on the premises. For example, a tenant rented some property which had been mortgaged by the landlord. The bank then foreclosed on the mortgage and the tenant was forced to leave. The tenant recovered damages from the landlord for violation of her right to quiet enjoyment of the premises.

A tenant also has a right to privacy. No landlord can enter a tenant's premises unless:

1) the landlord has made a specific appointment with the tenant and has given her at least 24 hours notice.

2) there is an emergency, or

3) the tenant has given notice to terminate the tenancy. The landlord may then enter the premises at reasonable hours to show the accommodations to prospective tenants.

The landlord also cannot prevent access to the building at reasonable times to political candidates. Neither the tenant nor the landlord can change the locks in the building without the other's consent.

Tenant's Conduct

A tenant cannot carry on any offensive or illegal activity on the premises. Nor may she create a disturbance in the building. If a tenant violates the above provisions she can be evicted.

Termination of Tenancy Agreement

Tenancy agreements may be terminated by the landlord or tenant. A landlord or tenant who wishes to terminate must give written notice to the other person. For example, if a tenant rents on a monthly basis and she wants to end the tenancy on June 30, she must give notice by May 31. If a landlord or tenant terminates the agreement, he/she does not have to give any reason for terminating the tenancy.

Eviction

A landlord has the right to evict a tenant without giving notice of one rental period, if he/she has a good reason for doing so. A landlord is permitted to evict a tenant under the following circumstances:

1) the tenant has not kept the premises clean or has not repaired any damage caused by the tenant.

2) the tenant has permitted any offensive or illegal activity on the premises, or

3) the tenant creates a nuisance and disturbs other tenants.

Before proceeding with eviction, the landlord must observe certain formalities:

1) He/she must give the tenant written notice listing all violations and asking her to correct the fault.

2) If the tenant disregards the notice, the landlord must then:

   (a) acquire an order of eviction from the Rentalsman, and

   (b) give the tenant a notice seven days before the eviction stating the reasons for the termination of the tenancy.

The Rentalsman will refuse to give an eviction order if he/she decides that the eviction is requested because the tenant was attempting to protect her rights under *The Residential Tenancies Act*.

Enforcement of the Act

The Office of the Rentalsman handles violations of *The Residential Tenancies Act*. If a woman has a complaint, she should report it to the Rentalsman. An investigator will look into the complaint and try to effect a solution between the landlord and tenant. If the landlord and tenant cannot come to an agreement, the complainant must make a formal written application to the Rentalsman. An investigator will inform the other party of the complaint and ask for a written response. Once the Rentalsman has heard from both sides, he/she can force the landlord or tenant to correct his/her violation.

In some cases, a further appeal may be made to the Rent Appeal Commission. Hearings before the Commission are usually only held where a tenant has been evicted because she was attempting to protect her rights under the Act or where there has been a dispute concerning a security deposit. Both parties will be notified of the time and place of the hearing. They will appear before the Commission and give evidence. The Commission will then try to bring about a settlement of the dispute. If no agreement can be reached, the landlord or tenant can make a further appeal to the Court of Appeal of Saskatchewan.

If a tenant has a complaint regarding the upkeep of the building, she should contact the City Health Department. If the condition of the premises falls below the standards set by city bylaws, the landlord can be ordered to make repairs. If he/she fails to do so, he/she may lose the right to rent the premises.

Landlord-Tenant Relations Outside the Scope of the Act

If a woman rents acommodations which are not covered by *The Residential Tenancies Act*, the Rentalsman cannot provide any assistance. In this situation, landlord-tenant relations are governed by case law and by *The Landlord-Tenant Act*. If a tenancy agreement falls outside the provisions of *The Residential Tenancies Act*, the tenant's rights are greatly reduced; the landlord is exempt from the restrictions in *The Residential Tenancies Act*.

In this situation, a tenant can protect herself by making sure the tenancy agreement includes certain terms which will work to her advantage. For example, an agreement could provide that the landlord must not enter the rented premises without the tenant's consent. However, if a landlord breaches the terms of the lease, the tenant cannot refuse to pay the rent. Her only remedy is to sue the landlord for damages.

If a woman is renting an expensive piece of property which is not covered by *The Residential Tenancies Act*, she should contact a lawyer before signing the ageement or the lease.

Assistance

If a landlord or tenant has any questions concerning the operation of the Act, he/she should contact:

Office of the Rentalsman
1871 Smith Street
REGINA S4P 3V7
(Phone 565-2699)

8th Floor
224-4th Avenue South
SASKATOON S7K 5M5
(Phone 664-5680)

800 Central Avenue
PRINCE ALBERT S6V 6Z2
(Phone 922-2213)

Rent Appeal Commission
122-3rd Avenue North
SASKATOON S7K 2H6
(Phone 664-6120)

Provincial Mediation Board
1871 Smith Street
REGINA S4P 3V7
(Phone 565-3022)

Consumer Protection Laws

Many times a woman has bought an article and been dissatisfied with her choice. In Saskatchewan, there are several statutes which make a retailer responsible for the goods he/she sells and the methods he/she uses to promote a sale. If a statute has been breached, the consumer has ways to seek compensation.

The Consumer Products Warranties Act

This Act makes retailers and manufacturers responsible for the quality of the goods sold to Saskatchewan consumers. The Act provides that each product sold to a consumer must carry with it certain statutory warranties. If one of these warranties is breached, the consumer's remedies may include the right to take legal action against the retailer and/or manufacturer.

Who is Covered by the Act?

The Consumer Products Warranties Act only applies where a consumer product is sold by a retail seller to a consumer. People who buy a consumer product from a consumer or receive a product as a gift are entitled to the same statutory warranties as the original consumer. Persons who do not own the consumer products but who may reasonably be expected to use them, and are personally injured as a result of a breach of statutory warranty, may seek damages for injuries suffered. A "consumer product" is an article which is used for personal, family or household purposes. A "consumer" is a person who buys or acquires a consumer product from a retail seller. The definition of "consumer" also includes a non-profit organization which is formed for charitable, cultural, recreational or educational purposes. Goods purchased for business purposes are generally excluded except those purchased by an individual or a family farming corporation for use in a farming or fishing business. The Act does not cover goods sold by a trustee in bankruptcy, a receiver, liquidator, sheriff or auctioneer.

A retail seller is anyone who sells consumer goods as an ordinary part of his/her business. However, a trustee in bankruptcy, a receiver, liquidator, sheriff, or auctioneer (who sells on behalf of someone else), or a person who is acting under a court order is not considered a retail seller. A sale includes a conditional sale, a contract of lease or hire and a transaction under which services are supplied along with the consumer product. *The Consumer Products Warranties Act* only applies if the transaction took place in Saskatchewan and is covered by those sections that were proclaimed in November 1977.

What Guarantees are Provided by the Act?

The Act stipulates that every consumer product carries with it the following statutory warranties:

1) The retail seller has a right to sell the product if a financial interest in the product is not held by a previous owner. For example, if a seller sold a used television set, the second-hand TV really belonged to the person who traded it in and not to the finance company who loaned the original owner the money to purchase it.

2) At the time of delivery to the consumer, the product is free from any security interest, lien, charge or encumbrance which is not known to the consumer before the sale. For example, if a retailer sold an article which was subject to a chattel mortgage, he/she is in breach of the statutory warranty if the consumer was not aware of the chattel mortgage.

3) Where the sale of the product is a sale by description, the product shall correspond with the description. What constitutes a sale by description will depend on the circumstances of the case.

4) The product is of acceptable quality. What constitutes acceptable quality will depend on the circumstances of the case. If the product is defective and the defect was brought to the consumer's attention or the consumer ought to have noticed the defect before the goods were purchased, then the warranty of acceptable quality would not apply.

5) Where the consumer informs the retailer of the particular purpose for which the product is being bought, and the product is reasonably suitable for that purpose. This warranty does not apply if the consumer did not question the retailer before buying the product or where it would be unreasonable to rely on the retailer's judgment or skill.

6) Where the sale of the product is a sale by sample, the bulk of the product shall correspond in quality with the sample.

7) The product and all its components shall be durable for a reasonable length of time. What constitutes a reasonable length of time will depend upon the situation. For example, the kind of product bought, its purchase price, maintenance, its usage and normal maintenance, are circumstances which, when considered with other relevant facts, may determine what amounts to a reasonable length of time.

8) Where the product normally requires repairs, spare parts and repair facilities will be available for a reasonable period of time after the sale of the product.

Any written statement by a retailer or manufacturer that a consumer product is exempt from the Act is of no effect. *The Consumer Products Warranties Act* does not prevent a retailer or manufacturer from providing additional written warranties. An example of an additional written warranty is the one usually found in the glove compartment of a new car. The warrantor must comply with the provisions of section 17. Section 17 states that no additional warranty shall contain any provision:

1) that makes the warrantor or his/her agent (person who acts for the warrantor) the sole judge in deciding whether or not there is a valid claim under the warranty;

2) that attempts to limit or excludes any statutory warranty or any of the rights or remedies contained in the Act;

3) that states a claim under the warranty is only effective when the consumer product is returned to the warrantor, if it would be unreasonable to return the product;

4) that limits the benefit of the warranty to the consumer and that excludes a person who receives a consumer product through a consumer (a gift); or

5) that is deceptively worded.

Section 17 also sets out certain requirements which must be met when a retailer or manufacturer gives additional written warranties.

What Remedies are Available?

If a product has a "substantial" or "uncorrectable" problem, the Act provides that the consumer may reject the product and be entitled to recover the purchase price from the party in breach. The consumer may also be able to recover damages for any other losses suffered that were reasonably foreseeable as liable to result from a breach of warranty. For example, if a customer ordered a brown refrigerator but received instead a white refrigerator, this will be a "substantial breach" of warranty.

When a product is faulty but can be repaired (remediable breach), the product must be repaired at no cost to the consumer. This must also be done within a reasonable length of time. If it is not, the consumer has the right to have the defect repaired somewhere else. The consumer can then recover from the party in breach the cost of such repairs and any damages. If a consumer returns a product and claims that a part or parts covered under the warranty are faulty and the warrantor disassembles the consumer product in order to remedy an apparent breach of warranty and finds that a breach of warranty does not in fact exist, the consumer shall pay the reasonable costs of disassembling the product, if she previously agreed in writing to pay such costs.

The Consumer Products Warranties Act also provides retailers with a specific course of action against a wholesaler, manufacturer or distributor. For example, if a customer claims a breach of statutory warranty because the item sold contains a manufacturer's defect, the retail seller has a right of action against the manufacturer for any losses suffered as a result of the consumer's claim.

Damages for Personal Injuries

A consumer or subsequent user who has been physically injured by using the defective product may claim damages for personal injuries. Damages can only be recovered if it is reasonably foreseeable that the injuries were liable to result from the breach of warranty.

Exemplary Damages

Exemplary damages are awarded when the judge thinks that the party in breach ought to be punished for his/her actions and that payment of ordinary compensation is not sufficient punishment.

Enforcement of the Act

If a consumer is experiencing difficulty in obtaining warranties, she should contact:

Licensing and Investigation Branch
Saskatchewan Consumer and Commercial Affairs
1871 Smith Street
REGINA S4P 3V7
(Phone 565-5550)

A consumer is required to writ out a formal complaint listing the product's defects. An investigator will contact the retailer or manufacturer and attempt to mediate the dispute. If no satisfactory agreement can be reached, the consumer may take the matter to court. If the damages claimed are up to $1,000, the consumer may sue the retailer pursuant to *The Small Claims Enforcement Act*. If the damages claimed are greater than $1,000, legal action may be taken in District Court.

Consumers and Small Claims Court is a publication available from Saskatchewan Consumer and Commercial Affairs. This booklet outlines what the small claims court is, who may use it, how to start a claim and what to do in court. It is available free of charge.

The Pyramid Franchises Act

In pyramid selling, a promoter sells both the product and the right to recruit others to sell franchises and recruit. The right to sell franchises as well as the product is then sold by those people, forming a pyramid-like structure with the promoter on top.

The Pyramid Franchises Act states that anyone who operates a pyramid franchise scheme must have a license or be granted an exemption from the licensing provisions of the Act from Saskatchewan Consumer and Commercial Affairs. The Act essentially provides protection for those who buy pyramid franchises (franchisees). Consumers who buy products in their own homes from a pyramid seller may also be protected by other legislation such as *The Direct Sellers Act*.

What Protection is Provided by *The Pyramid Franchises Act*?

The Act states that a sale of a pyramid franchise can be cancelled by sending a telegram or registered letter to the franchisor (the person who grants the franchise).

The seller is required to return all or part of the franchise fee once the arrangement has been terminated. The amount of the refund depends on how quickly the agreement is cancelled.

1) If the contract is cancelled within 60 days, there will be a 100 percent refund.

2) If the contract is cancelled between 60 and 90 days after the sale is made, there will be a 95 percent refund.

3) If the contract is cancelled between 90 and 120 days after the sale is made, there will be an 80 percent refund.

4) If the contract is cancelled between 120 and 180 days after the sale is made, there will be a 75 percent refund.

The seller may also be obliged to provide a refund for unsold merchandise. If a franchise is cancelled within 60 days, the buyer will receive a 100 percent refund. If it is cancelled between 60 days and one year after the sale, a 90 percent refund must be provided. The seller must return the purchase price within 60 days from the day the franchise was cancelled or the day the merchandise was returned to the seller, whichever comes first.

The Direct Sellers Act

With few exceptions, all firms or companies (vendors) who sell door-to-door are "direct sellers" and must be licensed by Saskatchewan Consumer and Commercial Affairs. A license does not vouch for the seller's integrity or the quality of the product, but it does provide consumer protection.

Under *The Direct Sellers Act*, consumers have a four-day "cooling-off period" in which to change a purchase decision and cancel the direct sales contract. Such a recission or cancellation right is the exception, not the rule, where consumer protection law is concerned. It is a common misunderstanding or mistake for consumers to think some sort of cancellation right exists for all purchases. All direct sales contracts must give the name and address of the vendor and a statement outlining the rescission right (the right to cancel the contract within four days of signing it). Cancellation or rescission must be made by registered letter or telegram and addressed to the vendor.

Buying on Credit

When a woman buys on credit, she receives possession of the article before she has paid the full purchase price. The purchaser will usually sign some kind of agreement promising to pay at some later date. In return for possessing the article immediately the purchaser must ultimately pay more for it. This increase in price is the interest rate. The amount of interest a consumer must pay depends on how much the article is worth, how long it takes the consumer to pay the full purchase price and the interest rate.

The three different kinds of credit discussed below are conditional sales agreements, credit cards and cash loans from banks or finance companies.

Conditional Sales Agreements

Under a conditional sales agreement, the buyer gets possession of the article but the seller is still the legal owner of the item until the full purchase price has been paid. The purchase price is usually paid in installments.

If a buyer falls behind in her payments, a conditional sales agreement will usually specify that the seller has the right to repossess (take back) the article. Before repossessing the goods the seller must notify the buyer that he/she intends to repossess. Once the notice has been given, the buyer can apply to a District Court judge for a hearing. If he/she thinks it is necessary, the judge may order that payments can be delayed or that the installments can be made in smaller amounts.

If the seller does repossess, he/she must keep the goods for 20 days to give the buyer the opportunity to "redeem" them. To redeem the goods the buyer must pay the installments which are owing and any additional interest which has accrued on the overdue payments. The buyer is not required to pay any more than this, even if there is a term in the conditional sales agreement which provides otherwise.

Credit Cards

Most credit cards provide revolving credit. With revolving credit, only a minimum amount must be paid each month. If the full purchase price is paid for each item purchased prior to a specified date no interest will be charged. If the full debt is not paid, the amount owed is subject to an interest charge. The amount of interest is called the cost of borrowing or the cost of credit.

If a credit card is lost, most companies will hold the owner liable for any articles bought by another person until the loss is reported. There is a legal maximum to this liability which will vary from province to province. If a credit card is lost, the company should be notified immediately by telephone or telegram and written notice should be sent to the company.

Unsolicited Goods and Credit Cards

Under *The Unsolicited Goods and Credit Card Act*, if a woman receives unsolicited goods or credit cards, she has no obligation to accept or refuse them. An obligation only arises if a woman informs the credit seller that she intends to accept the cards. If the recipient uses the card this creates an obligation to pay the company extending the credit. It is a good idea to destroy unwanted credit cards so they cannot be used by anyone.

Cash Loans

Cash loans are sometimes known as lender's credit. When a woman obtains a cash loan she borrows money from a bank or finance company. As collateral for the loan the lender will usually ask for a chattel mortgage on goods which the borrower owns or is about to purchase. Under a chattel mortgage agreement the lender has a "lien" on the goods. A lien on the goods allows the lender to repossess. If the borrower does not make her payments when they become due, the lender may have the articles seized and sold. The lender cannot seize the goods alone, he/she must ask the sheriff to seize the goods. Before proceeding with seizure, the sheriff must notify the borrower.

After the goods are seized the borrower may redeem them by repaying the balance of the loan. The sheriff is not obliged to hold the goods for a certain length of time before selling them.

If the proceeds from the sale of the goods are less than the amount still owing under the loan agreement, the borrower can be sued to make up the difference.

When a consumer obtains a cash loan to purchase an article she borrows money from one person and buys goods from another. If the two contracts are unconnected the consumer must repay the loan even if the goods are defective. In some cases, however, the seller and the lending company will be closely connected and the consumer will have a remedy against the lender if the goods are not of acceptable quality. If a consumer buys defective goods, she should consult Saskatchewan Consumer and Commercial Affairs to determine if she has rights against the lender.

Protection when Applying for Credit

When a person applies for credit, the creditor may attempt to check the applicant's financial rating (ability to pay and record of payment of past debts). To acquire this information, the credit seller will often contact a credit reporting agency. *The Credit Reporting Agencies Act* provides that any consumer may demand information about her credit rating from a credit reporting agency. If the information is inaccurate a consumer may have it corrected. Credit reporting agencies must ensure that all the information they give out is accurate.

Protection for Sellers and Lenders

Sometimes a consumer will sell an article which is covered by a conditional sales agreement or a chattel mortgage. in this situation, the owner can still repossess the goods from the innocent purchaser, provided he/she had registered the conditional sale or the chattel mortgage.

This registry is located in the Central Registration Office of the Office of the Saskatchewan Attorney General. It can be checked by anyone. It is a good idea for a purchaser to check the central registry before she buys second-hand goods to make sure they are not covered by a chattel mortgage or a conditional sales agreement.

Unfortunately, checking the registry will not always provide protection. The owner may have registered the conditional sale or chattel mortgage with the financial institution which loaned the money. As well, conditional sellers have 30 days to register a conditional sales agreement. If they register the agreement within the required length of time, they may still repossess the goods even if a second sale took place before registration.

Protection for Borrowers and Buyers

The legislation provides protection for borrowers and buyers through *The Cost of Credit Disclosure Act.*

This Act is designed to make sure the consumer knows exactly how much money she is borrowing and the rate of interest. It is important to read a contract before signing. Before making a cash loan the lender must disclose in writing:

1) the amount of the loan plus any charge for official or insurance fees.

2) the interest expressed in dollars and cents, and

3) the interest shown as an annual percentage rate.

Before completing a loan agreement for the sale of goods the seller must disclose in writing:

1) the price of the goods and any official or insurance fee charges,

2) the amount of the down payment or the value of any trade-in credited to the buyer,

3) the total amount to be paid, excluding credit charges,

4) the interest shown as an annual percentage rate, and

5) the interest expressed in dollars and cents.

Before a credit card (variable credit) is issued the seller must disclose in writing:

1) the yearly or monthly interest rate, expressed as a percentage, which the buyer is to pay on the unpaid balance, and

2) a chart showing the interest on a range of outstanding balances.

The company lending credit through the use of credit cards must provide a statement at least every three months which discloses:

1) the outstanding balance at the beginning of the period covered by the statement,

2) the description, amount and date of any credit purchase made during the period,

3) the total amount of any payments made during the period,

4) the cost of credit (interest) expressed in a lump sum, and

5) the outstanding balance at the end of such a period.

If the seller or lender does not comply with the provisions of the Act, he/she is not entitled to collect interest from the consumer. If he/she has already collected from the buyer, he/she must refund to the buyer all the money which was charged as interest. These provisions do not apply if the seller or lender made an honest error in quoting the interest rate. In this situation, the lender or seller may recover the amount specified in the dollars and cents quotation or the percentage quotation, whichever is lesser. If a bona fide error is made with respect to any other terms of the agreement, the lender may still collect interest from the borrower provided the borrower knew the essential terms of the agreement.

Consumer Obligations

Sometimes a woman is unable to pay her debts when they become due. When this occurs, the creditor (the person to whom the debt is owed) can use the legal process to collect the money owing. Conditional sellers have the right to repossess the goods which were bought under the conditional sales agreement. All other creditors must use judicial proceedings to collect the money due. The judicial process is outlined below.

Obtaining Judgment

The first step a creditor must take in collecting a debt is to bring a court action against the debtor. When the debtor appears in court she may raise any defence she may have.

A court action is initiated by serving a statement of claim, which informs the debtor that legal action is being taken against her and that she is required to be in a stated court at a stated time. The statement of claim will give the reasons why the legal action is being taken. If a debtor has a defence, she must submit a statement of defence to the court within the time set out in the summons. The statement of defence will give the reasons why the debtor is justified in not meeting the payments.

If no defence is submitted to the court, or if the defence is unsuccessful, the court will issue a judgment requiring the debtor to pay the money owing. If the debtor does not pay immediately, the creditor by enforcing the judgment, may place a garnishee on her pay cheque for collection of the debt.

Writ of Execution

A writ of execution is a document giving a sheriff authority to seize the goods of the debtor. The sheriff will take the goods, store them, sell them at a judicial sale and pay the proceeds to the creditor. A sheriff may seize not only goods of the debtor, but also any money, bonds, shares or promissory notes which the debtor owns. A writ of execution can also be levied against land owned by the debtor. A writ will only be filed against land if the debtor owes more than $200 and she does not have sufficient goods to pay off the judgment.

The writ of execution against land will be registered at the Saskatchewan Land Titles Office. If the debtor tries to sell the land it will be subject to the writ of execution. This means the creditor could have the land sold to pay off the debt even when it passes to the new owner. Before land can be sold at a judicial sale the creditor must obtain permission from a Queen's Bench judge. The document must be in the hands of the sheriff for at least one year before the land can be sold.

Even when a sheriff has a writ of execution he/she is not allowed to seize certain items. These items are listed in *The Exemptions Act*. They are:

1) the necessary clothing of the debtor and her family;

2) $2,000 worth of furniture and household appliances;

3) the food and heating fuel necessary to sustain the debtor and her family until the next harvest;

4) all farm animals and equipment, including one car or truck, that are necessary to run the debtor's farm for the next year;

5) one motor vehicle, when it is necessary for the proper conduct of the debtor's business;

6) the books of a professional person;

7) $2,000 worth of tools, office furniture or equipment used by the debtor in her business;

8) enough seed grain to seed all the debtor's land which is under cultivation and 14 bushels of potatoes for planting;

9) the crop of the debtor which is sufficient to pay all the costs of harvesting and provide a necessary living allowance for herself and her family until the crop of the following year is harvested;

10) the homestead, provided it is not more than 160 acres; any surplus may be sold;

11) the house and buildings occupied by the debtor and the lots on which they are situated to the extent of $16,000; and/or

12) the trailer or portable shack occupied by the debtor as living quarters. A trailer will not be exempt if the debtor claims a house under *The Exemptions Act*.

In some situations, a creditor can seize an article covered in *The Exemptions Act*. For example, if a seller gives the debtor money for the purchase of an article and takes a chattel mortgage on the items, he/she can seize the article despite the provisions of the Act.

A sheriff may only seize enough goods, which when sold, will make up the sum specified on the writ of execution. If he/she takes more than that, he/she is obliged to pay the debtor any amount which is in excess of the sum specified on the writ of execution. For example, if a sheriff was authorized to seize $500 worth of goods and he/she seized $700 worth of goods, he/she must pay the debtor $200. If the sheriff acted on the instructions of the creditor, the creditor could be forced to pay the excess.

Garnishment

The Attachment of Debts Act

To garnishee a debtor's wages, the creditor must serve a garnishee summons on the debtor's employer. The employer is obliged to pay the debtor's wages into court. The court will then give the money to the creditor. If the employer does not comply with the garnishee summons, he/she may be required to pay the amount owing to the creditor out of his/her own pocket. A garnishee summons must be served within five days prior to payday or it is of no effect. A new garnishee summons must be served each payday for as long as the debt remains unsatisfied. *The Attachment of Debts Act* provides that the amount of an employee's wages or salary exempt from attachment in any month is $500 plus $100 for each of her dependents.

If an employer pays the debtor's whole wage into court, the debtor may apply to the local registrar of the court to have the amount of her exemptions paid out to her.

A creditor can also serve a garnishee summons on a bank or any other person or institution who is holding funds for the debtor. The garnishee (person or institution who received the garnishee summons) must then pay the funds into court.

Protection for the Debtor

Relief from Debt Collection Outside the Legal Process

Sometimes a creditor will want to avoid the trouble of judicial debt collection so he/she will employ a collection agent. Collection agents sometimes use strong-arm tactics to collect from debtors. *The Collection Agents Act* prohibits harassment of debtors, such as:

1) Using, without lawful authority of any legal documents (such as a writ of execution).

2) Using form letters that are not filed with Saskatchewan Consumer and Commercial Affairs.

3) Making telephone calls or personal calls of such a nature and with such frequency as to constitute harassment of the debtor or her family.

4) Calling on a Sunday, a holiday or before eight o'clock a.m. or after nine o'clock p.m. on a working day.

5) Giving or threatening to give any information to an employer which might adversely affect the employment of a debtor or a member of her family.

If a collection agent has violated any provision of the Act, the injured party should notify Saskatchewan Consumer and Commercial Affairs.

Relief from Judicial Debt Collection

If a debtor has several creditors who are issuing writs of execution and garnishee summons against her, the law may provide some relief. *The Bankruptcy Act* provides that the court may issue a consolidation order. If a consolidation order is in force the debtor will pay a specified amount into court each month. While payments are being made the creditors' ordinary collection rights are suspended.

Provincial Mediation Board

To acquire a consolidation order the debtor must apply to the Provincial Mediation Board. The application must contain the following information:

1) the names of the creditors and the amount owed to each,

2) the kind of property the debtor owns and its value,

3) the names of the debtor's dependents,

4) the income of the debtor and her spouse, and

5) an estimate of the debtor's living expenses.

Once this information is obtained the clerk will determine whether or not a consolidation order can be issued. Usually, an order is granted if the debtor has a steady income and there is a reasonable possibility that all debts will be paid within three years. If this is not possible, a consolidation order can still be issued with the consent of all creditors or under a court order.

The clerk will prepare a proposed consolidation order which specifies the amount to be paid into court and when the payments will be made. Each creditor is notified that the clerk intends to apply for a consolidation order. Any creditor has the right to object to the terms of the order.

After all the creditor's objections are dealt with the clerk must issue the consolidation order. The order will state the amount to be paid into court, the time of payment and how much each creditor will receive. The order has the same effect as a judgment issued in favour of the debtor. Any creditors who were not included in the order may, with the consent of the creditors, be added at a later date. The initial order can be varied to accommodate any change in the debtor's circumstances.

While a consolidation order is in effect no creditor may have a garnishee summons or writ of execution issued against the debtor. A secured creditor (a creditor who has collateral for the debt) may realize on his/her security despite the consolidation order. This means that a lender or seller may repossess goods under a chattel mortgage or a conditional sales agreement.

A creditor listed in the order can apply to the court to terminate the order if:

1) the debtor defaults in payment,

2) a creditor, other than one listed in the order, initiates legal action against the debtor,

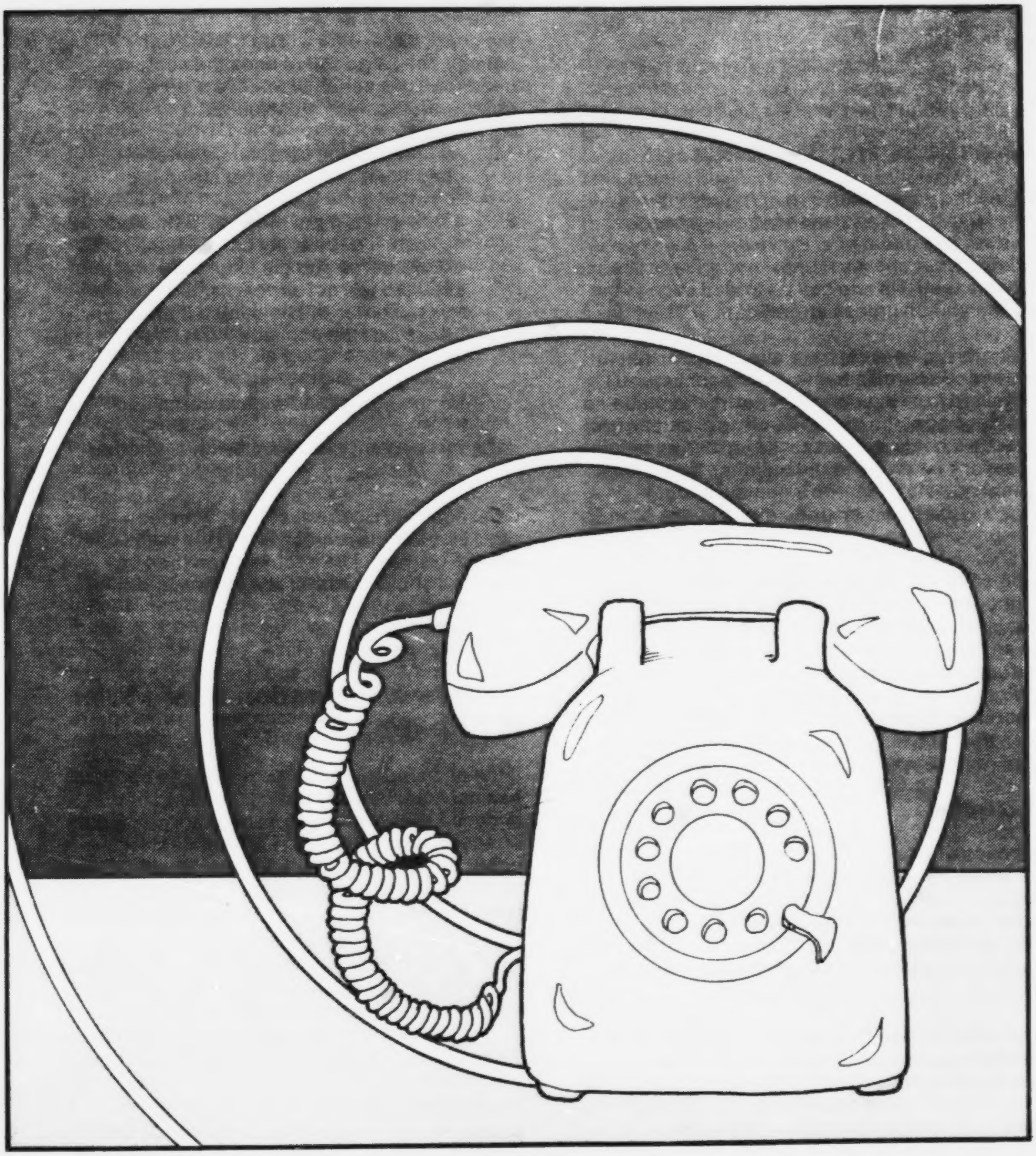
3) the debtor incurs debts over $500 after the order is made, or

4) the debtor leaves the province or attempts to remove seizable property from the province.

The order will automatically terminate if a debtor defaults in payments for a period of more than 90 days, unless the court orders otherwise. In this case, the creditors are free to use any available legal remedy to collect their debts. Once a consolidation order has been terminated (by the court or by the debtor's default in payment) the debtor cannot apply for another order until all the debts contained in the original order have been paid.

Caveat Emptor. Buyer beware.

Women and the Criminal Process



Women and the Criminal Process

Rights under the Criminal Code

The Criminal Code is a piece of legislation which sets out all federal criminal offences. It also determines the rights a woman has when she is arrested and taken to trial.

Questions and Searches

When the police question a woman without arresting her, she is under no obligation to answer any questions. However, if a woman is driving a car she must show her driver's license when asked. No one can be forced to go to the police station unless arrested.

The city police must have a search warrant to enter and search a home. This must be obtained from a judge, for a particular place and for a specific date. The city police can only search a home without a warrant if they believe there are weapons in the building. The police might be able to search a home without a warrant to arrest someone they believe is on the premises.

Some RCMP officers can search a house without a warrant if they have a writ of assistance. Once a writ of assistance is given to an officer, he can search the premises without obtaining a warrant. Not all RCMP officers have such a writ; therefore, a woman should ask to see it before permitting a search.

Arrest

A police officer does not have to have a warrant to arrest. Everyone has a right to know the reason for arrest, although the officer does not have to use the technical language of the charge. When arrested, it is not a good idea to resist, since this could be the basis of another charge.

The offender has the right to remain silent until she has spoken to a lawyer and the right to have legal advice before signing anything. There is no right to one phone call, although the officer in charge may allow one phone call as a courtesy.

Within 24 hours after arrest, an accused must be brought before the court to enter a plea (guilty or not guilty) to the charges. If the charges are serious, the judge will usually suggest that the accused get legal services before entering a plea.

If the accused enters a guilty plea when she is brought before the court, a sentence will be imposed. If only minor offences are involved, the sentence is usually a fine and the accused does not have to go to jail.

If the accused enters a plea of not guilty before the court, a trial date will be fixed. Then, usually, the judge will release the accused under one of a series of release orders. The orders vary from the most lenient:

1) an undertaking (a promise) without conditions — to the most stringent;

2) a recognizance (a promise) with a money deposit — depending on the seriousness of the charge and the likelihood that the accused will not appear for the trial. A release order will be denied if the judge thinks that the accused must be put in jail to:

    (a) ensure attendance at court, and

    (b) prevent the commission of another offence.

If the accused does not comply with the conditions of the release order, the judge can issue a warrant. The accused can then be arrested and jailed until she complies with the order.

Review of Detention where Trial is Delayed

If the accused has been detained and her trial has not commenced within 30 days (if the accused is charged with a summary conviction offence) or 90 days (if it is an indictable offence) there will be a hearing to decide if the accused should be released. The onus is on the jailor to automatically apply for a hearing on the expiry of time limits. (For a definition of summary conviction offences and indictable offences, see below.)

Trial

When a trial takes place, the accused will appear before a judge. The prosecution will give evidence to show that the accused committed the offence; the defence will give evidence to show the accused did not commit the offence. If the accused pleads guilty, the defence will try to get a lighter sentence.

There are different procedures for trials of summary convictions and indictable offences. A summary conviction offence is usually a minor offence. The maximum penalty is a $500 fine or six months in jail, or both. An indictable offence is a more serious offence. It has a higher maximum penalty.

Trial on a Summary Conviction

When the accused is brought to court to enter a plea before a judge of the Provincial Court for a summary conviction offence, the matter can be tried immediately in Provincial Court.

The accused has the right to be represented by a lawyer. She can also conduct her own defence or she can be defended by a person who is not a lawyer, provided that person is not paid.

A conviction on a summary offence can be appealed, but only on questions of law. For example, if the judge accepts a witness' testimony as true, it is a finding of fact. The Court of Appeal will not set aside a conviction on a finding of fact unless the judge's decision was totally unreasonable.

Indictable Offences

When an accused is charged with certain indictable offences, she will appear before a judge of the Provincial Court to choose whom she will be tried by — a magistrate or a judge without a jury or a judge and jury. When an accused is charged with some indictable offences, such as murder or attempted murder, there is no choice. She must be tried before a judge and jury.

Preliminary Inquiry

If the accused elects to appear before a judge or a judge and jury, a preliminary inquiry is held. In a preliminary inquiry, the accused, the prosecution and the defence counsel appear before a judge. The purpose of the inquiry is to determine if there is enough evidence to support a conviction. If the judge does not think there is sufficient evidence, he/she will discharge the accused. That will be the end of the proceedings. If there is enough evidence so that a judge might convict, the accused will be committed to trial.

Trial

The trial begins with reading the charge to the accused. If the accused pleads guilty she is sentenced. If she pleads not guilty, the prosecution calls witnesses and brings evidence to show the accused committed the crime. Then, the defence cross-examines the witnesses. The defence then calls witnesses and the prosecution cross-examines. When all the evidence has been called the prosecution and the defence each address the court. Each side speaks to the judge to persuade him to find in their favour.

If the trial is before a judge and jury, each lawyer addresses the jury. The judge then "charges" the jury. He/she sums up the case of the prosecution and the defence, relates the facts of the case proven by the evidence, and tells them what the law is. The jury then decides if the accused is guilty or innocent and the judge imposes the sentence.

Citizen's Arrest

Private citizens have the right to arrest a person in some situations. However, if a citizen arrests an offender when she is not entitled to do so, the offender can sue her for assault or false imprisonment. A citizen can only arrest a person who:

1) is commiting an indictable offence;

2) has committed any offence and an officer is pursuing him/her; or

3) has committed any offence in relation to property the citizen owns or is in possession of. A person authorized by the owner of the property may also arrest in this situation. Store detectives and security guards usually make citizen's arrests under the authority of the owner of the property.

The Battered Woman

What is Wife Battery?

Wife battery occurs when a woman's husband or common-law spouse physically abuses her or threatens her. Wife battery can range from an occasional slap or push to beatings causing severe injuries or death.

What to do when Abuse Occurs

Most women cannot defend themselves from physical violence alone. If a woman is being beaten, she should use the protection of neighbours, friends or the police. She should try to get out of the house and seek shelter from friends or neighbours.

If a woman phones the police, she should not mentioned that her husband or boyfriend is assaulting her. It is better to say that she is being attacked and ask for assistance. Police are often reluctant to get involved in family disputes and may take a long time to respond to a domestic disturbance call.

If a woman has been injured, she should go to the nearest hospital. Medical records can be used as evidence in court and it is possible to have photographs taken of the injuries.

After the Abuse Occurs

When a woman has been battered for the first time, she should make it clear that she will not tolerate such abuse. If the man has been drinking, she should wait until he is sober before discussing the incident. Often, if a woman doesn't stand up for herself the first time, the assaults will continue and become increasingly violent.

If there is a possibility of another violent attack, the woman should leave the home, at least temporarily. Many men repeat their violent outbursts despite their promises to reform. If a woman does not wish to seek shelter from friends or family, she can go to one of the transition houses in Saskatchewan. Transition houses provide temporary housing and protection for women and their children. They are staffed by sympathetic people who provide counselling, child care and legal advice. They will also help a woman to contact doctors, Legal Aid or Al Anon (an organization which provides assistance for the families of alcoholics). A woman does not have to pay for room and board at a transition house unless she is not eligible for social assistance. The transition houses in Saskatchewan are listed below:

Transition House
REGINA
(Phone 569-2292)

Regina Native Women's Residence and Resource Centre
REGINA
(Phone 545-2062)

Interval House
SASKATOON
(Phone 244-0185)

Transition House
Box 1866
MOOSE JAW
(Phone 693-6511)

Battlefords Interval House
NORTH BATTLEFORD
(Phone 445-2742)

Interval House Project
PRINCE ALBERT
(Phone 922-2100)

Interval House
Box 1523
LLOYDMINSTER

Legal Remedies

If a woman has been beaten and needs protection, there are some legal remedies available.

The Peace Bond

The Criminal Code states that, if a woman fears that someone will harm her, her spouse, her child or her property, she may lay an information before a judge. An information is simply a document which states that a criminal offence has been or is about to be committed. Laying an information sets the legal process in motion and allows the court and the police to take action against the offender. If the police are reluctant to initiate action, the woman may go to the police station and lay the information herself. Once the complaint is made, a prosecuting attorney will be appointed to handle the case.

A judge who receives such an information will order the complainant and the offender to appear in Provincial Court. If he/she thinks the fears of the complainant are well founded, he/she can order the offender to enter into a recognizance (a promise) to be of good behaviour and comply with any conditions the judge may set out (i.e., that the husband refrain from contacting the wife). This recognizance is called a peace bond. If the offender violates the recognizance, the judge has the power to fine him or put him in jail for up to 12 months.

Problems with a Peace Bond

One problem with obtaining a peace bond is that a woman is not protected until the hearing is completed. It is sometimes a good idea for the woman to live away from home until a peace bond is issued. Another drawback to acquiring a peace bond is that no real disciplinary measures can be taken until the recognizance has been violated. A man will not be jailed until he has broken his promise and harassed his wife once again. However, peace bonds are often helpful if the police force has been reluctant to answer previous domestic disturbance calls. If a recognizance has been issued and is then violated, the police have a clear duty to take action. In some cases, the imposition of a peace bond will make a man realize that his violent outbursts are serious and harmful.

Order for Exclusive Possession of the Matrimonial Home

Under *The Matrimonial Property Act* a wife can apply to the court for an order giving her sole possession of the matrimonial home and restraining her husband from going near the house.

If the husband violates the order, the court has the power to fine him up to $1,000 for the first violation and up to $500 for each day he continues to disobey the order. The court also has the power to jail the husband for contempt of court if he disregards the order. If the wife is in danger the order can be made on an *ex parte* application. This means that only the wife and her lawyer need appear in court. The husband's presence is not necessary. An order for exclusive possession is made with a minimum of formality and it can be acquired very quickly.

Problems with an Order for Exclusive Possession

The main problem with obtaining an order for exclusive possession is that no penalty will be enforced against the husband until after he has violated the order. Another difficulty with obtaining this order is that it involves a civil action and the woman should hire a lawyer to represent her. If a woman cannot afford legal counsel she should check to see if she is eligible for legal aid.

Assault Charge

A woman can charge her husband with common assault or assault causing bodily harm. The police may be reluctant to proceed with the charge, so the woman may have to lay the information herself. A charge of this kind will be handled like any other criminal offence. The accused will be apprehended, appear before a judge and usually released until the trial takes place. When the accused first appears before the judge, the prosecution should ask that the release order be granted only on the condition that the accused refrain from having further contact with his wife. If this condition is violated, the husband may be put in jail until the trial is over.

When the trial takes place, the wife will be required to appear in court and give evidence. If the wife has not been physically harmed, the husband will usually be fined up to $500 and/or jailed for up to six months. If the woman has suffered severe injury, the offender may be jailed for up to five years. However, unless a man has a criminal record, he will probably not receive a lengthy prison sentence. The judge has the power to accompany any sentence with a probation order. This order may stipulate that the offender refrain from contacting his wife or that he seek professional help for his problem.

Proceeding with Legal Action

Many men, after an assault incident, will reconcile with their wives, promising never to abuse them again. These promises are often broken. If a woman initiates legal action and then withdraws her complaint, the police and the prosecution will be much less cooperative if another beating takes place. A woman should look at her situation very carefully before she decides to lay or to drop the charges.

Rape

The offence of rape is defined in the Criminal Code in the following manner. A male person commits rape when he has sexual intercourse with a female person who is not his wife:

1) without her consent, or

2) with her consent, if the consent is:

   (a) extorted by threats or fear of bodily harm,

   (b) obtained by impersonating her husband, or

   (c) obtained by false and fraudulent representations as to the nature and quality of the act.

To prove the charge of rape, the prosecution must establish a lack of consent, the identity of the suspect (the accused is the man who actually committed the rape) and penetration (vagina/penis contact).

An attacker can also be charged with two lesser offences, attempted rape or indecent assault. To obtain a conviction of attempted rape, the prosecution must prove the accused's intent to have sexual intercourse, but actual penetration does not have to be established. The charge of indecent assault will be laid against the accused if he has done any act toward the victim which may be considered indecent (such as grabbing her breasts, her bottom, etc.).

Penalties

The maximum penalty for rape is life imprisonment. However, in practice, the sentence for rape can be much lower. A first offender will sometimes receive a sentence of two years less a day. The maximum penalty for attempted rape is 10 years imprisonment. For indecent assault of a female, the maximum penalty is five years. A man convicted under one of these offences does not actually serve the maximum penalty.

Prosecution

The following is an outline of the legal steps a woman must take to bring a charge of rape (or attempted rape, or indecent assault) against an offender.

The Initial Police Report

If a woman intends to report the matter to the police, she should do so as soon as possible. If the woman does not want to go to the police, she may still be able to make an informal report to the police. Some police stations will accept a report made by an unidentified victim or a third party. This information helps the police identify repeating rapists or suspects.

When a woman contacts the police, an investigator will visit her immediately. In making an initial report, the officer will want general information about the incident and the place where the rape occurred, so that the police may obtain evidence (e.g., fingerprints, weapons or stains) about the identity of the rapist. The police will also note the victim's behaviour and emotional state. This could be used as evidence to prove lack of consent.

It is very important not to change clothing or shower or bathe. Important evidence can be obtained from the victim's clothes and physical state immediately after the attack.

To initiate criminal proceedings, an information must be laid against the attacker. Almost all informations are laid by the police. If the police think that there is not enough evidence to sustain a charge of rape, they may lay an information which charges the attacker with a lesser offence or they may not lay an information at all.

Medical Examination

Once the initial report has been obtained, the police will usually take the victim to the hospital. The medical examination has two functions: the woman's injuries can be properly treated and evidence of violent assault can be obtained. The doctor will check for any bruises or cuts. The physician must also give an internal gynecological exam. This examination is necessary to determine if there is any damage to the external genitals, the vagina and the cervix. A doctor will also take samples from the vagina to check for the presence of sperm or semen.

The hospital staff will note the condition of the woman's clothing and place each piece into a separate bag and label it. The clothes will later be tested for semen and blood stains. Because the woman's clothing will be kept for evidence, she should bring a change of clothing to the hospital.

The hospital staff may conduct a few other tests to help identify the rapist. If the woman has scratched her assaulter, scrapings from underneath her fingernails will be taken.

A woman may also undergo a pubic hair examination. This involves combing the pubic area to obtain hairs from the rapist.

During the examination, the doctor or nurse will also take blood samples to check for gonorrhea or syphilis. However, the presence of venereal disease will not show up for some time following intercourse. Therefore, a woman should have the following tests conducted after the hospital examination:

1) **Gonorrhea.** Since it takes about 10 days for gonorrhea to show up on any tests, a woman should be tested about two weeks after the incident. Two negative tests are necessary, so a woman should have a second test one week after the first test was taken. A woman should be tested in all areas where she came into sexual contact with the rapist.

2) **Syphilis.** A woman should have a blood test for syphilis four to six weeks after the incident. She should also have a follow-up test three months later since 25 percent of people tested have false negative results.

3) **Pregnancy.** If a woman's menstrual period is late, a pregnancy test should be taken six weeks after the first day of the last period.

Investigation

Shortly after the initial report and the medical examination, the victim will have an interview with the investigating officer. The detective will ask for minute details of the rape incident and what happened before and after the attack. The officer will also ask about force and threats the assailant used and anything the victim did to resist. If the victim knows the rapist, she will be questioned about their relationship. If he was a stranger, she will be asked to describe him. At this time (or during the medical examination), the victim might also have photographs taken. These pictures will record bruises which may disappear by the time the trial is held.

If a woman finds the questions irrelevant or humiliating, she should ask the detective to tell her the purpose behind the questions. In some places, a woman is asked to take a lie detector test; however, the results of the test cannot be used as evidence and the woman has a right to refuse to take this test.

After the interview, the officers will write up a summary of the statement and ask the woman to sign it or they will ask her to prepare her own statement. A woman should also write an account of the assault for her own use, and if she remembers more details she should add these to her account. Following the interview, the woman may be asked to look at mug shots or identify a suspect in a lineup.

Arrest and Release of a Suspect

After a suspect is arrested, he will probably be released on bail or on a personal recognizance. The release will probably be under the condition that the suspect does not contact the victim. If he does so, the woman should report it to the police. The judge then has the right to increase the suspect's bail or have him returned to jail.

Interview with the Prosecuting Attorney

The Crown (the prosecuting attorney) will try to prove that the assault actually did take place. The Crown has the responsibility for prosecuting all offenders and the rape victim in this case is the primary witness. A prosecutor is assigned to the victim; she does not hire her own lawyer to represent her.

The prosecuting attorney will ask the woman to describe the incident. He/she will then decide whether or not to take the accused to trial. If the attorney decides not to proceed against the accused, the woman should ask for the reason for his/her decision.

Preliminary Inquiry

A preliminary hearing will usually be held between six to nine months after the assault. The hearing will take place in an open court before a judge. The accused and his lawyer will be present. The victim is usually asked to describe the incident and the defence lawyer has a right to cross-examine the victim and all other witnesses. The judge will then decide if there is enough evidence to send the accused to trial.

Trial

The trial will usually take place six to nine months after the hearing. The procedure for a rape trial is the same as for any other criminal offence; however, there are some defences and rules of evidence which are unique to rape trials.

The defence lawyer can use three methods to obtain an acquittal. He/she can show that the accused has not been positively identified as the man who committed the rape, that there was no penetration (although this is not an issue in a charge of attempted rape or indecent assault), or that the victim consented. The defence of consent is one that is most commonly used. The defence attorney will try to show that the woman, by her behaviour or appearance, encouraged sexual intercourse and then "cried rape." A defence lawyer will try to imply that such behaviour as hitchhiking, going to a bar alone or wearing no underclothing is an invitation to rape.

In some situations, a woman's previous sexual conduct may be examined. A witness can always be questioned about previous sexual relations with the accused. If a witness is asked a question she considers offensive, she should pause before answering to give the Crown a chance to object. If the Crown doesn't do so, she may ask the judge if she is obliged to answer the question. If the judge says she must answer, she has no legal right to refuse.

If the defence lawyer wishes to introduce evidence of the victim's sexual relations with people other than the accused, the prosecution must be given reasonable notice. The judge will hear the evidence in private and determine if it is necessary to justly decide the case. If the judge thinks the evidence is necessary, the woman will be examined in an open court and will be compelled to answer the questions asked by the defence lawyer.

By introducing such evidence, the defence will try to show that the victim, having consented to sexual intercourse in the past, was the kind of woman who would consent in this instance.

Another block to obtaining a conviction is that corrobative evidence (independent evidence other than that of the victim's testimony which will support her statement) is usually necessary. Although, according to the Criminal Code, corroborative evidence is not required to sustain a conviction, in practice, it is usually necessary to prove that the accused is guilty beyond a reasonable doubt.

In addition, if the victim cannot testify under oath, her story must be corroborated to sustain a conviction. If the victim is a child who is too young to understand the nature of the witness' oath, she can only give unsworn evidence. Whether or not a child is old enough to give sworn evidence depends on the facts of the particular case.

Making the Decision

Sexual assault is always a traumatic experience. Sometimes, the process of pressing a rape charge is almost as painful. Suspicious police officers, Crown attorneys and defence lawyers can often make the woman feel that her "loose" behaviour invited the rape. A woman should try to remember that this idea is based on widespread misconceptions about rapists. Rape is an act of violence perpetrated on almost any female; it has nothing to do with the victim's supposedly seductive behaviour.

If a woman decides to report the incident to the police or to take the matter to court, she needs strong emotional support from family, friends or counsellers. In Saskatchewan, there are several rape crisis centres. These centres will put rape victims in touch with sympathetic women who can accompany the victim to the hospital or the police.

The rape crisis centres are listed below:

Regina
Regina Women's Community Centre and Rape Counselling Line
219-1808 Smith Street
REGINA S4P 2N3
(Phone 522-2777 or 352-7688)

24-Hour Rape Crisis Line
(Phone 352-0434)

Saskatoon
Saskatoon Rape Crisis/Sexual Assault and Information Centre
D-249-2nd Avenue South
SASKATOON S7K 1K8
(Phone 244-2444)

Prince Albert
Prince Albert Sexual Assault Centre
66A-13th Street West
PRINCE ALBERT S6V 3E8
(Phone 922-7273)

North Battleford
North Battleford Rape Crisis Line
Box 1044
NORTH BATTLEFORD S9A 0V0
(Phone 446-4444)

Wills and Succession

Wills and Succession

When a person dies, his/her property will be passed on to someone else. By drawing up a will, a person can determine who has the right to inherit the property. The process of inheriting a deceased person's property is called succession.

Making a Valid Will

There are certain procedures a person must follow to make a valid will. If a will is not valid it will not be enforced by the court. The requirements for making a valid will are set out in *The Wills Act.*

Signature

The Wills Act states that the testatrix (the woman making the will — if a man makes a will he is called a testator) must sign her name at the end of the will. However, a will may be valid if the signature is not placed at the end of the document. If it is apparent, from looking at the document, that the testatrix intended to give effect to the will by her signature, the will can be enforced.

If the testatrix is not capable of signing her will, another person may sign for her. The person must sign the document at the testatrix's request and in her presence. The person signing for the testatrix should write the testatrix's name, not his/her own name.

Witnesses

The testatrix must sign the will before two witnesses. If a testatrix signs her will when she is alone, she can "acknowledge" her signature before two witnesses. To do this, she must show the witnesses her will and tell them the signature is hers. When a will is signed or acknowledged in the presence of witnesses, both witnesses must be present at the same time. A testatrix cannot sign her will before one witness and, at a later date, acknowledge her signature before another witness.

After the witnesses have seen the testatrix sign (or heard the acknowledgment) they must sign the will in the presence of the testatrix. This shows that the will has been properly attested (witnessed).

If a person attests the signing of a will, and she or her spouse would receive a gift under the will, the gift will be void. The will is still valid, but that particular beneficiary will not be entitled to receive his/her inheritance.

Holograph Wills (Handwritten Wills which are not Witnessed)

No witnesses are necessary if the testatrix writes a holograph will. A holograph will is one which is completely in the handwriting of the testatrix and is signed by her. The will has to be totally handwritten. A printed will form that is filled out by the testatrix is not a holograph will.

Alterations

If a person wants to make a minor change in her will, she does not have to draw up an entirely new document. She can add a simple codicil, (an addition to the will which alters its terms) which must be signed and witnessed in the same way that the will was.

Terms of the Will

If the provisions of a will are ambiguous the court may misinterpret the document or refuse to enforce the will. This can be avoided by writing the will according to the following rules:

1) The will should clearly state that the property will pass on the testatrix's death and not before. For example, if the testatrix states "I give my car to Tony," it is not clear if the gift is to take effect now or when the testatrix dies. Therefore, the testatrix should state "upon my death, I leave my car to Tony."

2) The will should clearly describe which property is to be distributed and who will receive it. The beneficiary (person who inherits the gift) should be described by his/her full name, not by his/her relationship to the testatrix. For example, in one case a testator left some property to his wife, but did not mention her name. The man was living with a woman, but he had been legally married previously. The property went to his estranged wife, because "wife" was interpreted to mean his legal wife.

3) A will can only give something away once. For example, a testatrix could not leave everything to her husband and when he

dies, to her children. The husband would take the inheritance without conditions attached.

4) A will cannot impose unfair conditions about inheritance. For example, a testatrix could not leave everything to her son on condition that he never marries. The son could go to court and have the conditions struck down.

When making provisions for the maintenance of children it is important to remember that no child can receive an inheritance until he/she reaches the age of 18. A will should name a dependable executor (administrator of the estate) to hold the funds in trust for the child until he/she comes of age. The trustee (executor of an ongoing estate) should be given the power to invest the capital and provide some income along the way for the dependents. A trust fund can also be set up for any beneficiary who could not manage the inheritance alone. When a trust is set up, the trustee, (administrator of the trust) looks after the funds for the benefit of the beneficiary. A lawyer should be consulted if it is necessary to set up a trust.

When is a Will Unenforceable?

The Wills Act provides that a will is automatically revoked (make unenforceable) in the following circumstances:

1) The testatrix marries, unless the will has been written in anticipation of an impending marriage.

2) Another later will is made by the testatrix. However, the earlier document will still be enforceable if it can be shown to the court that the testatrix did not intend to revoke the first will by writing the second.

3) The testatrix makes a written statement declaring her intention to revoke a will. This document must be signed and attested according to the provisions of *The Wills Act*.

4) The will is torn, burnt or otherwise destroyed by the testatrix.

If there is no Will, what Happens to the Deceased's Property?

If a person dies leaving no will, *The Intestate Succession Act* determines how the property will be distributed. The Act establishes the following rules for division of the deceased's assets:

1) If an estate is less than $40,000, the spouse of the intestate (the person who dies without a will) will receive all the property.

2) If the estate is more than $40,000 the spouse will receive $40,000. The remaining property will be divided as follows:

   (a) if there is a spouse and one child, the child and the spouse will each receive one-half of the property;

   (b) if there is a spouse and two or more children, the spouse will receive one-third of the property. The children will divide up the remaining two-thirds. If one of the testatrix's children has died but has left children of her own, the grandchildren will divide up their parent's share.

   An example can best illustrate the application of these rules. A man is married and has a son and daughter. The daughter has two children of her own. The daughter dies. The intestate then dies, leaving an estate worth $130,000. The estate will be divided as follows:

   (a) The wife will receive $40,000 plus one-third of the remaining estate. (1/3 x $90,000.)

   (b) The children would each be entitled to one-half of the remaining property, $60,000; therefore, each child is entitled to $30,000.

   (c) Since the daughter has died, her children will split her share. These children would each receive $15,000. The son's children would receive nothing since their father is still alive.

3) If there is a surviving spouse but no children, the spouse will inherit everything.

4) If there are surviving children but no surviving spouse the children will divide the estate equally between them.

5) If the intestate leaves no spouse or children the property will be divided as follows:

   (a) The property will go to the intestate's mother and father in equal shares. If one parent is dead, the other parent will inherit everything.

(b) If both parents are dead, the estate will be divided among the intestate's brothers and sisters. If any brother or sister is dead, the children of the deceased brother or sister will take the share their parent would have taken. If the intestate leaves no brothers or sisters, the estate will be divided equally between her nieces and nephews.

(c) If the deceased leaves no nephews and nieces, the estate will go to her next-of-kin.

(d) If the deceased has no living relatives, her property will pass to the province in which she lived.

If children receive property under the Act before they reach 18, their shares will be kept in court for them until they come of age. If both parents die and leave no wills, a public trustee appointed by the courts will allocate money for the children's maintenance. When the children reach 18, they will receive the rest of the estate.

The Rights of an Illegitimate Child under *The Intestate Succession Act*

If the intestate is a woman, her illegitimate child has the same right to inherit as any other child. If the intestate is a man, his illegitimate child can take a share of his estate provided the court is satisfied that:

1) the intestate acknowledged that he was the father of the child, and

2) the intestate was living with the mother at the time of the child's birth and seemed to accept the child as his own.

If Dependents are not Properly Provided for under a Will or under *The Intestate Succession Act*, What Remedy is Available?

Sometimes the division of property under a will does not make proper provision for the deceased's dependents. In this situation, a dependent can apply to the court and the testator's assets will be redistributed. An application may be made under *The Matrimonial Property Act* or *The Dependents' Relief Act*.

The Matrimonial Property Act

Who may apply?

A husband or wife may commence an action for distribution of matrimonial property after his or her spouse dies. If an action for distribution of matrimonial property has been initiated and the spouse then dies, the application may be continued.

How will the Property be Divided?

The judge will order distribution of the property according to the guidelines set out in sections 21 and 22 of *The Matrimonial Property Act*. Therefore, there is a presumption that the spouse will receive 50 percent of the estate. Any money paid or property transferred to a surviving spouse is deemed never to have been part of the estate of the deceased. The matrimonial property order takes precedence over any further distribution under a will, *The Dependents' Relief Act* or *The Intestate Succession Act*.

Time Limits

The action must be commenced within six months after the issue of a grant of probate or administration. The executor or administrator is not allowed to distribute any portion of the estate during this time unless he/she has the consent of the surviving spouse or a court order. If the exector violates the Act, he/she will be personally liable for any loss suffered by the surviving spouse as a result of the distribution.

The Dependents' Relief Act

Who May Apply?

The Dependents' Relief Act provides a remedy for both the spouse and the dependent children of the deceased. Under the Act, a dependent child is a child of the testatrix (or intestate) who:

1) is under the age of 18, or

2) is over the age of 18 and has a physical or mental disability and therefore:

   (a) cannot support himself/herself, or

   (b) should receive a greater share of the estate.

A child includes:

1) an adopted child,
2) a child of a testator born after the testator's death, or
3) an illegitimate child.

If the deceased is a man, an illegitimate child must prove that he/she is the child of the deceased. The dependent can apply for a court hearing to establish his/her paternity. The applicant must show that:

1) the deceased acknowledged that he was the father of the dependent child, or
2) the deceased was living with the mother at the time of the child's birth and seemed to have accepted the child as his own.

If the applicant's paternity has been established by previous court proceedings, a hearing is not necessary.

How will the Property be Divided?

Under section 9 of the Act, a dependent can apply to the Surrogate Court or the Court of Queen's Bench for a redistribution of the assets. Before making an order, the court must establish that adequate provision has not been made for the applicant. Then the court can order the payment of any maintenance it considers just and reasonable. In making its order the court will consider the following factors:

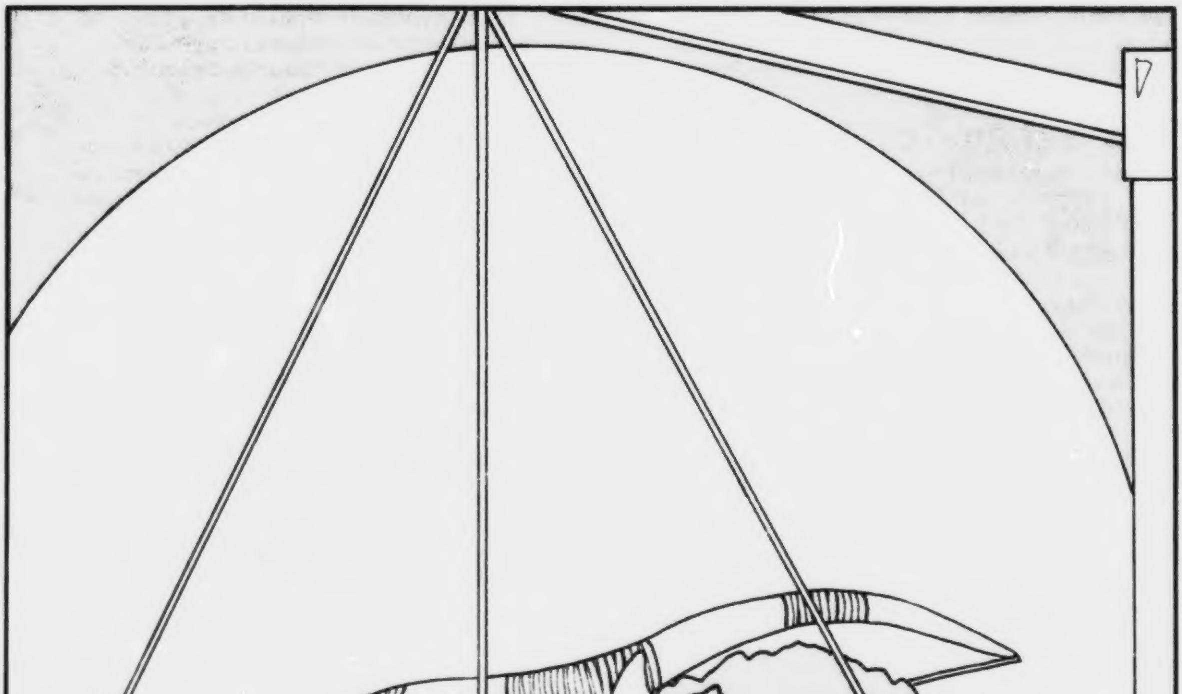
1) The nature of the property in the testatrix's estate.
2) Any past, present or future income of the testatrix.
3) The conduct of the applicant in relation to the testatrix and otherwise.
4) The testatrix's reasons for leaving the dependent without adequate maintenance. In looking at this factor, the court will not put much emphasis on the testatrix's statements in her will. For example, a will may say: "Bill has been an ungrateful son and so I leave him only $1."

   It must be proved that Bill is an ungrateful son. Also, cases have held that matrimonial disputes are no reason for leaving a spouse out of a will. If a husband and wife are separated at the time of a testatrix's death, the amount of maintenance may be decreased, but the surviving spouse is still entitled to apply under the Act.
5) The claims of other dependents.
6) Any other factor the court considers relevant.

Time Limits

The time limits under this act are the same as under *The Matrimonial Property Act.*

Legal Rights for Native Women



Legal Rights of Native Women

In most cases, native people have the same legal rights and obligations as other Canadians. By virtue of the treaties made between the Indians and the Crown and *The British North America Act*, Indian people have specific rights. *The Indian Act* is an administrative Act of the federal government; it is designed to facilitate the constitutional responsibility embodied in *The BNA Act*.

The Indian Act

What are the Rights of Status Indians?

Under *The Indian Act* and the treaties made between the Indians and the federal government, status Indians have specific rights and privileges. These rights are available only to native people who are registered as Indians; they are not available to enfranchised Indians and other non-status native people. Some of these rights are:

1) the right to live on reserve lands,

2) the right to free health care,

3) the right to free education,

4) the right to hunt, trap and fish for food on unoccupied Crown lands or on lands to which Indians have a right to access,

5) exemption from income tax on all income made on a reserve, and

6) the right to a payment of $5 per year for life (provided this right has been created by treaty).

Who is Covered by *The Indian Act*?

The provisions of the Act do not apply to all native people. They apply only to those people who are entitled to be registered as Indians. The Department of Indian Affairs hires a person called the "registrar" who is responsible for maintaining a list of the people entitled to be registered as Indians.

A native woman is entitled to be registered as an Indian if she is the direct descendant through the male line of the Indians who signed a treaty with the Crown in 1874 (provided that her ancestors did not become enfranchised). When the treaties were signed, a census was taken of every man, woman and child. Every Indian man was given a treaty number and, when he married, his wife assumed the same number. The descendants of these people (through the male line) are eligible to be registered under *The Indian Act*. Both men and women are entitled to be registered as Indians, but they must have an Indian father to qualify for registration.

There are many people of native ancestry who are not entitled to be registered under *The Indian Act*. The following people are excluded from the operation of the Act:

1) A person or his/her descendant who has received half-breed land or money scrip. In Saskatchewan, after the Riel Rebellion, the federal government issued scrip to settle Metis land claims. Scrip was a document issued to non-treaty Indians and Metis which usually promised land or money for the purchase of land. The people who received scrip, and their descendants, are not entitled to be registered under the Act. Sometimes, Indian or Metis people who accepted scrip (or their descendants) later wished to reclaim their treaty rights. They were allowed to do so until August 13, 1958 by becoming registered Indians under the Act. The people (and their descendants) who were registered as of August 13, 1958 are covered by *The Indian Act*.

2) A person who becomes enfranchised.

3) A person who mother and whose father's mother were not registered Indians will be excluded from the operation of the Act when he/she reaches the age of 21.

4) A woman who marries a man who is not a registered Indian.

Marriage and Indian Status

When an Indian woman marries, her status and the status of her children may be affected. The circumstances in which a woman's status will change through marriage are outlined below.

1) If an Indian woman marries a man without status, she will lose her status as a registered Indian. However, the Minister of Indian Affairs will suspend this provision in *The Indian Act* with regard to a particular band, if the Band Council requests it. When an Indian woman loses

her status, she will receive a per capita share of the money held by the Department of Indian Affairs for her band (band money). A per capita share is calculated by taking the amount of the band money and dividing it by the number of members in the band. For example, if the band had 100 members and had $10,000 in band money, the per capita shares for each member would be $100 ($10,000 divided by 100). If the band has also received money under a treaty, the woman will also receive a portion of the treaty money. The Minister of Indian Affairs will determine how much treaty money the woman is entitled to receive.

If a woman marries a non-status man and then becomes separated, divorced or widowed, she will not regain her status. However, the Band Council sometimes allows a woman who has lost status to return to her reserve when she is divorced or widowed.

When a woman loses her status through marriage, any children born to the couple will not be registered Indians. If the woman had other children before the marriage who were registered Indians, the Department of Indian Affairs can order that the children also lose their status. However, in most cases, the Department of Indian Affairs will not make this order with regard to children under 16 unless it is specifically requested. If the children are over 16, they will not lose their Indian status unless they consent.

2) If a woman without Indian status marries a status Indian man, she will acquire Indian status. The children born after the marriage will also have status. If the couple gets divorced or the husband dies, the woman and children will still retain their Indian status.

3) If a woman with status marries a man with status, she will retain her status. When a woman with band membership marries, she will become a member of her husband's band. The band to which a woman belongs determines her right to live on a particular reserve. However, a family can live on a woman's former reserve with the consent of the Band Council. If the man and woman are not legally married, the woman may still live on the reserve of her partner's band if the Band Council consents.

When two Indians from different bands marry, the wife's per capita share of the band money will be transferred to her husband's band. If the per capita share from the wife's band is greater than the per capita share from the husband's band, only the amount equal to the husband's per capita share will be transferred to the husband's band. The wife will receive whatever is left over from her per capita share. The Minister of Indian Affairs will determine at what times and in what manner the wife will receive the money.

4) If a registered Indian woman has a child before she is married, the child will have status, but it can be removed if the status is protested. When the child has been registered as a status Indian, a protest can be made within 12 months after the registration. The protest can be made to the Registrar by the Band Council or by 10 people of the band who are over the age of 21. The protest must be submitted in writing and provide good reasons for depriving the child of status.

Once the protest is made, the Registrar will conduct an investigation. If the father of the child is a status Indian, the child will retain his/her status; if the father has no status, the child will lose his/her status. When the Registrar investigates the matter, he/she must give all interested parties a chance to present their point of view.

When an unmarried woman registers the birth of her child, she may sign a declaration stating who the father is. If the man named in the declaration does not have status, the child will automatically not have status. He/she cannot be registered as an Indian. However, the mother is not obliged to name the father. If she does not sign a declaration, the child can be registered as an Indian, subject to protest.

Enfranchisement

If an Indian person wishes to be enfranchised, he/she must make an application to the Minister of Indian Affairs. The Minister will approve the application if it is shown that the applicant:

1) is 21 years of age or older,

2) is able to assume the responsibilities of becoming a Canadian citizen, and

3) will be capable of supporting himself/herself or his/her dependents.

If the application is granted, an order of enfranchisement will be made by the federal cabinet.

When an Indian man becomes enfranchised, the Minister of Indian Affairs may order that the man's wife and unmarried children (who are under 18) lose their status also. However, the wife and children will not become enfranchised in the following situations:

1) If the wife and children are living apart from the husband they will not be enfranchised.

2) If the wife has children who were born before the marriage, the children will not be enfranchised. However, if the child is the natural child of the husband, he/she might lose status when the father does. If both parents have signed a declaration that the husband is the father and the child has the father's surname, the child will probably lose his/her status.

When an Indian woman becomes enfranchised, she loses all treaty rights and is excluded from the operation of *The Indian Act*. An enfranichsed Indian will receive a per capita share of the money held for her band and a portion of her band's treaty money (provided that her band is entitled to money under a treaty).

If a woman owns lands on a reserve when she is enfranchised, she may sell the land or give it away within 30 days. If the land is not transferred to another person within 30 days, it will be put up for sale by the superintendent. When the land is sold the enfranchised Indian will receive the money. If the land is not sold within six months, the interest in the land will revert to the band. The Minister of Indian Affairs may order the band to pay the former owner for any permanent improvements made to the land. A permanent improvement is a change or addition made to the land which is lasting and which increases its value (e.g., a house).

If the enfranchised Indian still wants to occupy the land she owns, she may do so with the consent of the Band Council. The federal cabinet will then issue an order declaring that this land is no longer part of a reserve. The enfranchised Indian then has the right to occupy the land for 10 years; in return she must pay the band for the use of the land. The Minister of Indian Affairs will set the amount which must be paid to the band. At the end of the 10 years, the enfranchised Indian will have full ownership of the land; she will no longer have to pay the band for using the land.

Indian Children

Registration of a Status Indian Child

Indian mothers must register the birth of their children according to *The Vital Statistics Act*. (For further details about registration see page 93.) If the newborn child is entitled to Indian status, the mother must say so on the registration form. The Department of Indian Affairs will then be notified and the child's name will be entered on the appropriate band list.

Adoption of a Status Indian Child

If an Indian Child is adopted, he/she will not lose Indian status, even if the adopting parents do not have status. Usually, Saskatchewan Social Services will inform the adopting parents that the child has Indian status. However, the parents will not be told which band the child belongs to, so that the details of adoption will remain secret. When the adopted child reaches the age of 18, she can find out the name of the band she belongs to. If the adopting parents are status Indians, the child's name will be transferred to the band list of the adopting parents.

Children and School Attendance

The Indian Act states that every Indian child who reaches the age of seven must attend school. If the Minister of Indian Affairs demands it, the child must begin school at the age of six. Indian children must attend school until they reach the age of 16. In some cases, the Minister of Indian Affairs can require that the child continue to attend school after her 16th birthday. However, no one can be forced to go to school after she reaches the age of 18.

Absence from school is permitted under the following circumstances:

1) The child is sick or unable to attend school for some other good reason.

2) The child must help the parents in the home. Absence in this case is only permitted if the child is away from school for less than six weeks in a term and permission has been granted by the Superintendent.

3) The child is receiving an adequate education at home or at some other school. In this case, the Department of Indian Affairs must approve education given outside the school.

4) The child is unable to attend school because there is no room for her in that particular school.

Indian children are required to attend the school selected by the Minister of Indian Affairs. However, no Roman Catholic child will be assigned to a Protestant school and no Protestant child will be assigned to a Catholic school.

Truant officers are appointed by the Department of Indian Affairs to make sure that the child attends school. If a child is not attending school, the truant officer must notify the child's parent or guardian. If the child does not return to school within three days after notice has been given, the parent is guilty of a summary conviction offence and can be fined up to $5 and/or imprisoned for up to 10 days. The truant officer also has the power to remove the child from the home and take him/her to school.

Lands on Reserves

No one can legally occupy land on a reserve unless consent has been obtained from the Band Council and approval has been given by the Department of Indian Affairs. When the Minister of Indian Affairs has approved the occupation, he/she will issue a Certificate of Possession. When this certificate is given to an Indian, she has the right to live on the land for as long as she wants. If a person has a valid Location Ticket as of September 4, 1951, she has the right to occupy the land described in the ticket. If a person holds a Location Ticket, she does not need a Certificate of Possession.

Sometimes, the Minister will not approve the Band Council's decision to give someone a specific portion of land. In this case, the Minister will issue a Certificate of Occupation, which allows the person to occupy the land for two years. Sometimes the Certificate of Occupation is issued with certain conditions attached, that is, a woman must use the land in a certain way or she will not be allowed to occupy the land.

At the end of the two-year period, the Minister may do one of three things:

1) extend the Certificate of Occupation for another two years,

2) issue a Certificate of Possession which will given the Indian the right to stay on the land indefinitely, or

3) refuse approval and order that the land should be returned to the Band Council.

The Registrar of Reserve Lands will keep a record of all the certificates and other transactions relating to land.

An Indian may transfer her right to occupy the land to the band or to any member of the band. However, the transfer does not come into effect until the Minister approves the transfer.

When an Indian loses the right to live on a reserve, she loses her right to possess reserve lands. She must sell or give away her right to possession of the land within six months (or within a longer or shorter period if the Minister of Indian Affairs orders). The land may be transferred to the band or to a specific member of the band. If the woman does not transfer her land within the required time, the right to occupy the land will go back to the band. The band will pay the former owner for any permanent improvements she has made. The Minister of Indian Affairs will determine how much she will be paid for the permanent improvements.

Inheritance of Property

Wills

A will is a document written by a person stating who shall receive her property when she dies. The person who makes a will is called the testatrix (if she is a woman) or the testator (if he is a man).

There are special laws dealing with wills written by Indian people, but these laws usually only apply to Indians who live on the reserve. If they live off the reserve, ordinary provincial laws will apply. (For information on the provincial laws, see page 86.)

The Indian Act states that every Indian has the right to make a will. However, no will is legally valid unless the Minister of Indian Affairs has approved it. (If a will is not legally valid, it will not be enforced by law.) The Minister can declare that a will is invalid for one of the following reasons:

1) The testatrix (the person who made the will) did not sign the will freely.

2) The testatrix was under 21 or was mentally incompetent. A woman is considered mentally incompetent if she is not capable of managing her affairs because of some mental disorder.

3) The will does not provide for the people who were financially dependent on the testatrix.

4) The will attempts to dispose of reserve land in a way which violates the provisions of the Act or which is harmful to the band. For example, provision in a will would be declared invalid if it leaves reserve land to someone who was not entitled to live on the reserve.

5) The terms of the will are too vague or are impossible to carry out.

6) The terms of the will are against the public interest.

If the Minister approves the will, the property will pass according to the directions set out in the will. If the whole will is declared invalid, the deceased's property will be distributed as if a will had never been made. If some terms of the will are valid and some are not, the valid terms will be carried out. The property covered by the invalid terms becomes part of the residue (the property which has not been distributed under the will).

Sometimes a will specifies who will receive the residue. For example, a testatrix may say "I leave $500 each to A, B and C. If there is any money left over after these gifts are made, A is to receive it."

If the gift to B is invalid, A will receive the $500 intended for B because she is entitled to the residue. If a will does not leave the residue to anyone, the extra property will be distributed as if a will had never been made.

If a will leaves reserve land to someone who is not allowed to live on a reserve, the right to occupy the land must be offered for sale. (For further details regarding the sale of reserve land, see page 95.)

When the Minister of Indian Affairs approves the will, he/she will also give the executor permission to carry out the terms of the will. The executor is a person named in the will who has the right to pay the testatrix's debts and transfer the property according to the directions in the will. If the will does not name an executor, or if the executor named cannot do the job, the Minister of Indian Affairs will appoint an administrator to carry out the terms of the will. Usually, the Minister will appoint the testatrix's closest relative to act as an administrator.

What Happens When the Deceased did not Make a Will?

When a person dies without making a will, the person is said to have died "intestate." When an intestate dies, *The Indian Act* governs the distribution of the deceased's property. The property will be distributed as follows:

1) If the property left by the deceased is less than $2,000, all the property will go to the intestate's spouse.

2) If the estate is more than $2,000, the spouse will receive $2,000 and the remaining property will be divided as follows:

   (a) If there is a spouse and one child, the child and the spouse will each receive one-half of the property.

   (b) If there is a spouse and two or more children, the spouse will receive one-third of the property. The children will divide up the remaining two-thirds. If one of the testatrix's children has died but has left children of her own, the grandchildren will divide up their parent's share.

An example can best illustrate the application of these rules. A married man has a son and daughter. The daughter has two children of her own. The daughter dies. The intestate then dies, leaving an estate worth $8,000. The estate will be divided as follows:

1) The wife will receive $2,000 plus one-third of the remaining estate (1/3 of $6,000 = $2,000).

2) Each child of the intestate would be entitled to one-half of the remaining property; therefore, each child is entitled to $2,000 (1/2 of $4,000).

3) Since the daughter has died, her children will split her share. Her children would receive $1,000 each. The son's children would receive nothing since their father is still alive.

If there is a surviving spouse but no children, the spouse will inherit everything. If there are surviving children but no surviving spouse, the children will divide the estate equally between them. If the intestate leaves no spouse or children, the property will be divided as follows:

1) The property will go to the intestate's mother and father in equal shares. If one parent is dead, the other parent will inherit everything. If the intestate was an illegitimate child, the mother will inherit the property. If the mother died before the intestate died, the estate will be divided equally between all the children of the mother.

2) If both parents are dead, the property will be divided among the intestate's brothers and sisters. If any brother or sister is dead, the children of the deceased brother or sister will take the share their parents would have taken. If the intestate leaves no brothers or sisters, the property will be divided equally between her nieces and nephews.

3) If the deceased leaves no nephews or nieces, the estate will go to her next of kin. However, any interest in reserve land shall go back to the band if the next of kin of the intestate is more remote than a brother or sister.

The Minister of Indian Affairs may direct that the property be distributed differently from that stated in the Act. The distribution of property will be altered in the following situations:

1) If the Minister of Indian Affairs thinks that the children of the intestate will not be properly provided for he/she may order that some of the widow's share should go to the children.

2) The Minister of Indian Affairs may direct that the intestate's widow should have the right to occupy any land occupied by her husband at his death.

For the purpose of inheriting property, the Minister may treat a common-law wife as the legal widow of the deceased provided the couple were living together at the time of the intestate's death. A woman may be considered the widow of a deceased man in the following situations;

1) The man and woman had been living together for at least seven years before the man's death and the couple was unable to marry because one of them was already married to someone else.

2) The man and woman were free to marry, they had been living together for a number of years and the woman was supported and publicly treated by the man as his wife.

If the Minister decides the woman should be treated as the deceased's widow and the man dies intestate, she would inherit the spouse's share of the property and their children would inherit the children's share of the property. Note: This provision applies only to common-law wives, not common-law husbands.

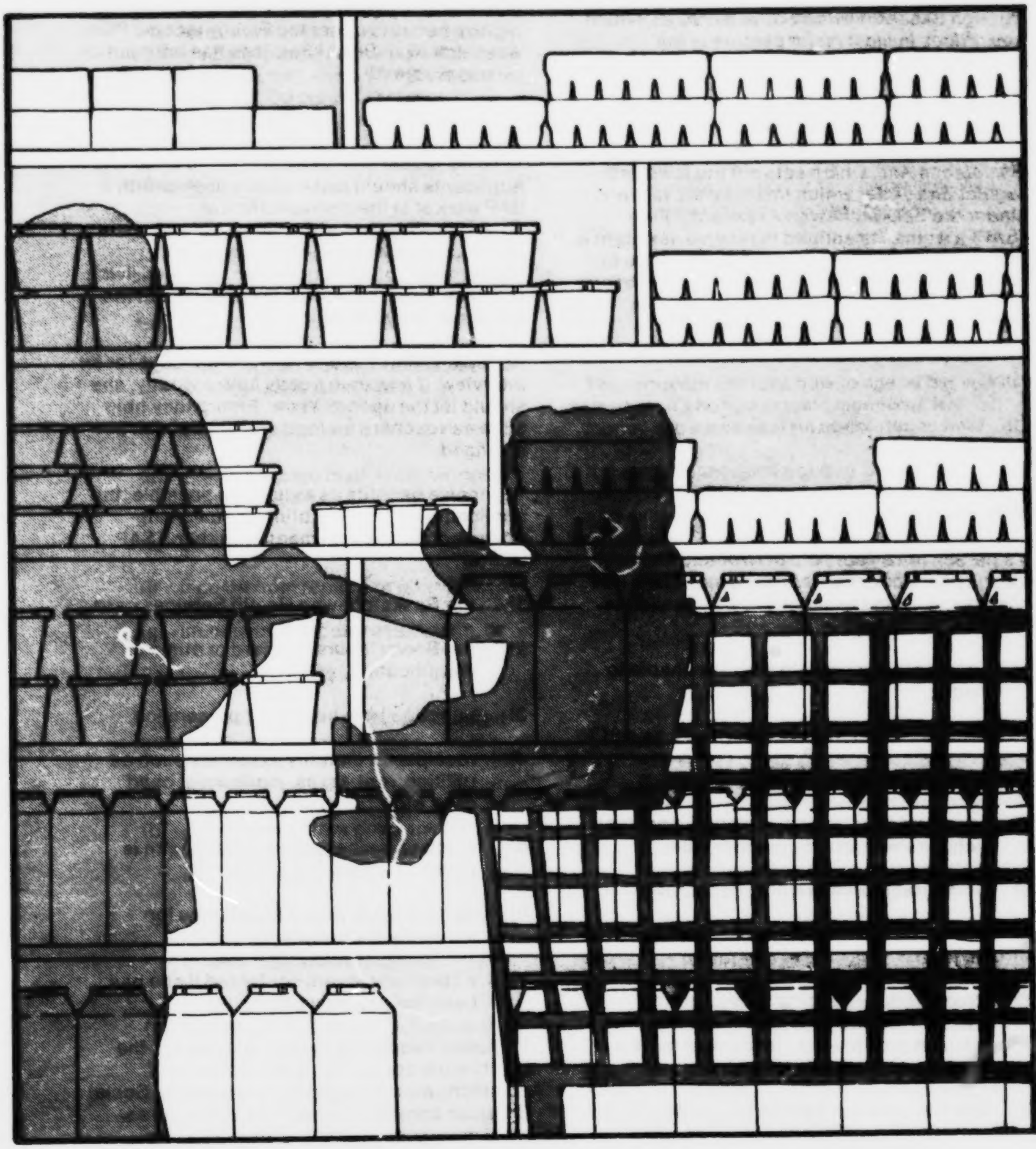
If a woman dies intestate and leaves illegitimate children, the children will receive a share of the property as if they were legitimate. If the mother is dead, the children will take any property the mother would have received if she was alive.

Inheritance of Reserve Lands

If someone who is not entitled to live on a reserve inherits the right to possess reserve lands (through an intestacy or through a will), that right shall be offered for sale by the superintendent. The person who inherited the land will receive the proceeds from the sale. If no offer is made within six months, the right to possession (or occupation) of the land will go back to the band. The band may pay the person who inherited the land for any permanent improvements made to the land. The Minister will determine if payment for permanent improvements is necessary, and the amount of the payment.

Only those who are entitled to live on the reserve may buy the right to possession (or occupation). The Minister must give his/her approval before the possession is considered legal.

Women and Welfare



Women and Welfare

Social Assistance: Rights and Responsibilities

Social assistance is the recognition that each person has a *right* tc food, clothing and shelter. In Saskatchewan, assistance is administered through Saskatchewan Social Services, which has offices in most major centres in the province. In Prince Albert and Moose Jaw, city social services units administer this program. The Department of Northern Saskatchewan administers assistance in the North. All of these offices operate under *The Saskatchewan Assistance Act*, which sets out the laws and regulations under which financial aid is given. Under the Saskatchewan Assistance Plan (SAP) a woman is entitled to receive assistance according to her needs. She does not have to prove that she "deserves" welfare, only that she needs it for basic living expenses and has explored every possibility of self-support, including rehabilitation and employment.

Who Can Apply

If a person is 18 years old or over and has no means of support, he/she may apply for assistance. Some examples of who is eligible are:

1) people in poor health who are unable to work,

2) single expectant mothers,

3) single-parent families,

4) people on strike who can prove need and who are willing to take other jobs,

5) immigrants who are not sponsored,

6) women with children whose husbands are in jail,

7) treaty Indians who have lived off the reserve for one year (treaty Indians may also choose to apply to Indian Affairs instead of Social Services), or

8) people between 16 and 18 whose parents will not support them.

If a person is mentally and physically capable of work, he/she will be asked to prove that he/she has looked for a job. A woman can apply for welfare if unemployment insurance, workers' compensation, or union benefits are not enough for her needs. If work is found, assistance may continue until the first pay cheque, depending on the circumstances.

A woman can work and still receive assistance, but any amount earned over the allowable rate will be deducted from her welfare cheque. If she is working she may also be eligible to receive benefits under the Family Income Plan. Saskatchewan Social Services has information on this program.

How to Apply

Applicants should make appointments with a SAP worker at the nearest office of Saskatchewan Social Services. This will be found in the telephone directory under "Government of Saskatchewan." Women living in Prince Albert or Moose Jaw should call the city social services unit.

Applicants may have to wait several days for an interview. If a woman needs help urgently, she should let the agency know. Emergency help such as vouchers for food and shelter can be arranged.

To receive benefits as quickly as possible, the applicant should try to bring the following documents to the first meeting with the SAP worker:

1) her Saskatchewan Health Services card,

2) her Social Insurance card or other identification,

3) pay slips from her last or present job,

4) receipts for monthly expenses such as utilities, rent, taxes, mortgages, child care, etc.,

5) a letter from her doctor if her health is poor,

6) names, birthdates and incomes for everyone in the family, and

7) a list of employers contacted if she has been looking for work.

If a family needs assistance, the head of the family must apply. This also applies to common-law marriages; Saskatchewan Social Services considers them to be the same as legal marriages.

Assistance

The amount of assistance received is decided through the following process:

1) **Assets and Income:** the applicant must give the SAP worker information about her assets, such as savings, property, or a second vehicle. She will be asked to sign a form allowing Social Services to check her bank account or other assets she may have had over the last few years. A woman does not have to spend all her savings before applying for assistance. A single person may keep $2,500; a family can keep $5,000 plus $500 for each dependent. If she is asked to spend all her savings, or sell property that she considers necessary, she may appeal. (See Appeals.)

   The following items are considered income:

   (a) wages, commissions and tips,

   (b) child support payments or alimony (maintenance payments),

   (c) family allowance,

   (d) unemployment insurance, workers' compensation,

   (e) disability or old age pensions,

   (f) income from renters or boarders,

   (g) income from a business or farm, or

   (h) regular cash gifts.

   The following items are not considered income:

   (a) payments for keeping foster children,

   (b) government grant programs such as subsidized daycare or home improvement grants,

   (c) earnings of dependents who are attending school and under 18, unless they are supporting themselves,

   (d) insurance to replace damaged or stolen property,

   (e) child tax credits, or

   (f) prizes up to $1,000 per year.

After determining the applicant's total income, the SAP worker will subtract income tax, union or professional dues, Canada Pension Plan or unemployment insurance deductions, or any maintenance payments made under a court order or separation agreement. The income left after these deductions will be subtracted from the woman's needs to determine how much assistance she will receive to meet her expenses.

2) **Expenses:** these are the expenses the recipient will be eligible for:

   (a) food, clothing and personal items,

   (b) household allowance,

   (c) rent, fuel, utilities, and

   (d) allowances for those who board or live in special-care homes.

   Most of the above expenses are paid according to standard rates set by Saskatchewan Social Services. Usually, the actual cost of rent and utilities is paid, up to certain limits.

The recipient decides how to spend her welfare cheque. If she has trouble managing her money, a trustee may be appointed to help her.

If the applicant does not give Social Services accurate information about her assets, income and expenses, she may receive overpayments, which must be paid back. If she deliberately gives false information, she may be charged with fraud, which is a criminal offence.

Other Benefits

1) **Special Needs:** sometimes people are in special circumstances that require more money than the basic assistance provides. Saskatchewan Social Services may give extra assistance for such things as:

   (a) special clothing, such as work uniforms;

   (b) travelling expenses for emergency or necessary trips;

   (c) special allowances for handicapped people;

   (d) household furnishings and supplies;

(e) education expenses, except for tuition or tutoring (a woman must have been on assistance for at least 12 months before she will be considered for this special need. The course must be no longer than two years.);

(f) expenses for starting work, such as licenses, fees or tools;

(g) housekeeping allowances;

(h) laundry services;

(i) moving expenses;

(j) child care expenses for working single parents;

(k) funerals; or

(l) special diet expenses for health problems.

These special expenses must be approved by Saskatchewan Social Services.

2) **Medical Expenses:** Saskatchewan residents have most medical expenses paid for under the Saskatchewan Hospital Services Plan (SHSP). If there are medical expenses that are not covered by SHSP, a woman may qualify for a Supplementary Health Card. This card must be approved by the Medical Services Division, Saskatchewan Health, and covers the following items:

(a) drugs prescribed by a doctor but not covered by the Saskatchewan Drug Plan,

(b) eyeglasses,

(c) necessary dental work, or

(d) hearing aids.

Medical expenses must be approved by the Medical Services Division, Saskatchewan Health through a doctor, dentist or optometrist. The SAP worker will help an applicant with this.

Appeals

If a woman is now receiving social assistance or wants to apply for assistance, she has the right to appeal decisions made by Saskatchewan Social Services. The following situations are examples of grounds for appeal:

1) A woman was not allowed to apply for welfare.

2) She applied for welfare and was refused.

3) She applied for welfare and was not given an answer within a reasonable time (what a reasonable time is depends on the circumstances).

4) Her benefits were cancelled, withheld, or the amount was changed.

5) The amount of assistance received is lower than her needs.

6) The recipient is not satisfied with a decision made by her SAP worker that involves a discretionary area, such as Special Needs.

7) The applicant is not satisfied with the way she has been treated by the SAP worker or another official in Saskatchewan Social Services.

If a woman wants to launch an appeal, she must do so within 45 days after having been told of the department's decision.

How to Appeal

Making an Appeal

A woman may start an appeal by filling out an appeal form obtained from Social Services or by writing a letter and sending it to the Director in her region. A request for an appeal must be in writing.

The first step in the appeal process is an informal meeting with the Director. Sometimes the problem is a simple misunderstanding. The Director will go over the situation with the appellant (the woman with a compaint) and try to reach a solution. If a solution is not reached, the Director will arrange for an appeal hearing.

The Local Appeal Hearing

The local appeal hearing must be held within 15 days after the day the appeal was requested, unless the appellant requests a change of date. Her case will be heard by the local appeal committee. This committee is made up of people from the community; they are not part of Social Services.

The hearing is held in private unless the appellant requests an open hearing. The local appeal hearing is not like a court, but the appellant should bring witnesses or evidence that will help her case. She can also bring another adult along to represent her or provide moral support. (See Advocates.)

The appeal committee hears both sides and tries to come to a fair decision. If the appellant is not satisfied with the decision the local appeal committee makes, she may take the appeal to the Provincial Social Services Appeal Board. The regional Director can also take an appeal to the Provincial Appeal Board if he/she does not agree with the local appeal committee's decision.

The Provincial Appeal Hearing

If the appellant wants to take her appeal to the Provincial Appeal Board, she must let the regional Director know within 20 days after the local appeal committee tells her of its decision.

The Provincial Social Services Appeal Board is also made up of people from the community. Meetings are usually held in Regina, but can be held in the appellant's community if she requests it. Social Services can pay her travelling and child care expenses for the provincial hearing. This hearing is similar to the local appeal committee hearing, and the appellant should bring any evidence she has. She may also bring a friend or advocate.

The decision of the Provincial Social Services Appeal Board is final, unless new information is brought forward which changes the circumstances.

Advocates

An appellant may bring another adult with her to the local or provincial appeal hearings to speak for her, to help her present her case, or just for support.

In some regions there are people who act as special advocates for appeals. A woman can find out if there is a special advocate in her area by asking the regional Director. The Director will tell her if there is an advocate in her area, and will help her to get in touch with that person. These special advocates will help the appellant prepare for the appeal hearing, and will either speak for her at the hearing or help her present her case. The advocates do not work for Saskatchewan Social Services and their services are free. She may also live in an area that has a welfare rights or self-help group. The staff from these organizations can answer her questions or help with appeals. She can also go to her local legal aid office for help or information about an appeal. The following organizations are two such self-help groups:

Saskatoon Self-Help Council
914A-20th Street West
SASKATOON S7M 0Y4
(Phone 665-6722)

Welfare Rights Centre
1843 Broad Street
REGINA S4P 1X8
(Phone 527-3521)

Resources

The following agencies can provide information and assistance:

Freedom from Discrimination

The Saskatchewan Human Rights Commission

Saskatoon Office
8th Floor
Canterbury Towers
224-4th Avenue South
SASKATOON S7H 0V7
(Phone 664-5952)

Prince Albert Office
49-12th Street East
PRINCE ALBERT S6V 1B5
(Phone 764-6846)

Regina Office
1819 Cornwall Street
REGINA S4P 2K4
(Phone 565-2530)

Change of Name

Vital Statistics Division
Saskatchewan Health
3475 Albert Street
REGINA S4S 6X6
(Phone 565-3092)

Trade Unions

Industrial Relations Branch
Saskatchewan Labour
1914 Hamilton Street
REGINA S4P 4V4
(Phone 565-2402)

The Labour Standards Act

Apprenticeship and Standards Division Saskatchewan Labour

Regina Office
1914 Hamilton Street
REGINA S4P 4V4
(Phone 565-2438)

Saskatoon Office
3130-8th Street East
SASKATOON S7H 0W2
(Phone 664-5042)

Moose Jaw Office
110 Ominica Street West
MOOSE JAW S6H 6V2
(Phone 693-6101)

Yorkton Office
Provincial Office Building
72 Smith Street East
YORKTON S3N 2Y4
(Phone 783-9725)

Prince Albert Office
196-9th Street East
PRINCE ALBERT S6V 0X5
(Phone 764-5131)

North Battleford Office
10109-11th Avenue
NORTH BATTLEFORD S9A 2S3
(Phone 445-6348)

Weyburn Office
110 Souris Avenue
WEYBURN S4H 2Z9
(Phone 842-4193)

Swift Current Office
350 Cheadle Street West
SWIFT CURRENT S9H 4G3
(Phone 773-3392)

Complaints regarding equal pay for similar work, maternity, paternity and adoption leave provisions should be referred to:

The Women's Division
Saskatchewan Labour
1914 Hamilton Street
REGINA S4P 4V4
(Phone 565-2453 or 565-2468)

Sexual Harassment in the Workplace

The Saskatchewan Human Rights Commission

Saskatoon Office
8th Floor
Canterbury Towers
224-4th Avenue South
SASKATOON S7H 0V7
(Phone 664-5952)

Prince Albert Office
49-12th Street East
PRINCE ALBERT S6V 1B5
(Phone 764-6846)

Regina Office
1819 Cornwall Street
REGINA S4P 2K4
(Phone 565-2530)

Workers' Compensation

Workers' Compensation Board
1840 Lorne Street
REGINA S4P 2L8
(Phone 565-4370)

Workers' Advocate
1914 Hamilton Street
REGINA S4P 4V4
(Phone 565-2456)

Unemployment Insurance

Canada Employment Centres

BEAUVAL
Box 100
(Phone 288-2130)

CREIGHTON
Box 520
(Phone 687-3624)

ESTEVAN
1302-3rd Street
(Phone 634-3624)

HUMBOLDT
Box 2198
(Phone 682-5414)

LA RONGE
Box 324
(Phone 425-2229)

LLOYDMINSTER
4618-1st Street East
(Phone 1-403-825-6291)

MEADOW LAKE
101-1st Street East
(Phone 236-5668)

MELFORT
104 McLeod Street East
(Phone 752-5731)

MELVILLE
317 Main Street
(Phone 728-5718)

MOOSE JAW
61 Ross Street West
(Phone 693-0555)

NORTH BATTLEFORD
1254-100th Street
(Phone 445-9481)

PRINCE ALBERT
10-13th Street East
(Phone 763-2611)

REGINA
2045 Broad Street
(Phone 359-6130)

SASKATOON
101-22nd Street East
(Phone 665-4515)

SWIFT CURRENT
50 Herbert Street East
(Phone 773-8324)

WEYBURN
210 Souris Avenue
(Phone 842-5424)

YORKTON
18 Broadway Street East
(Phone 783-9421)

URANIUM CITY
Box 398
(Phone 498-3100)

Income Security Programs for Retirement

Health and Welfare Canada Canada Pension Plan and Old Age Security

Regina Office
1975 Scarth Street
REGINA S4P 3K4
(Phone 359-5631)

Saskatoon Office
230-22nd Street East
SASKATOON
(Phone 665-4222)

Private Pension Plans

Pension Benefits Division
Saskatchewan Labour
1914 Hamilton Street
REGINA S4P 4V4
(Phone 565-2458)

Landlord-Tenant Relations

Office of the Rentalsman

Regina Office
1871 Smith Street
REGINA S4P 3V7
(Phone 565-2699)

Saskatoon Office
8th Floor
Canterbury Towers
224-4th Avenue South
SASKATOON S7K 5M5
(Phone 664-5680)

Prince Albert Office
800 Central Avenue
PRINCE ALBERT S6V 6Z2
(Phone 922-2213)

Rent Appeal Commission
122-3rd Avenue North
SASKATOON S7K 2H6
(Phone 664-6120)

Provincial Mediation Board
1871 Smith Street
REGINA S4P 3V7
(Phone 565-3022)

Consumer Protection Laws

Licensing and Investigation Branch Saskatchewan Consumer and Commercial Affairs

Regina Office
1871 Smith Street
REGINA S4P 3V7
(Phone 565-5550)

Saskatoon Office
122-3rd Avenue North
SASKATOON S7K 2H6
(Phone 664-5725)

Battered Women

Transition House
REGINA
(Phone 545-2292)

Regina Native Women's Residence and Resource Centre
REGINA
(Phone 545-2062)

Interval House
SASKATOON
(Phone 244-0185)

Transition House
Box 1866
MOOSE JAW
(Phone 693-6511)

Battlefords Interval House
NORTH BATTLEFORD
(Phone 445-2742)

Interval House Project
PRINCE ALBERT
(Phone 922-2100)

Interval House
Box 1523
LLOYDMINSTER

Rape

Regina Women's Community Centre and
Sexual Assault Line
219-1808 Smith Street
REGINA S4P 3N3
(Phone 522-2777 or 352-7688)

24-Hour Rape Crisis Line
REGINA
(Phone 352-0434)

Saskatoon Rape Crisis Line/Sexual Assault
and Information Centre
D249-2nd Avenue South
SASKATOON S7K 1K8
(Phone 244-2224)

Prince Albert Sexual Assault Centre
66A-13th Street West
PRINCE ALBERT S6V 3E8
(Phone 922-7273)

North Battleford Rape Crisis Line
Box 1044
NORTH BATTLEFORD S9A 0V0
(Phone 446-4444)

Legal Rights for Native Women

Department of Indian Affairs and Northern Development

Director General
2332-11th Avenue
REGINA S4P 2G7
(Phone 569-5948)

District Manager
10102-12th Avenue
NORTH BATTLEFORD S9A 2S8
(Phone 445-9406)

District Manager
1302 Central Avenue
PRINCE ALBERT S6V 4W3
(Phone 764-5225)

District Manager
520A Broadway Street West
YORKTON S3N 0P3
(Phone 783-9761)

District Manager
220-20th Street East
SASKATOON S7K 0A6
(Phone 665-4768)

District Manager
Touchwood-File Hills
FORT QU'APPELLE S0G 1S0
(Phone 332-6543)

District Manager
General Delivery
MEADOW LAKE S0M 1V0
(Phone 236-4472)

Superintendent
Shellbrook Indian Agency
Box 790
SHELLBROOK S0J 2E0
(Phone 747-2627)

Legal Aid

Legal services are available free of charge for people in financial need. Legal Aid clinics are located at:

Moose Jaw and Community Legal Services
113-110 Ominica Street West
MOOSE JAW S6H 6V2
(Phone 693-6422)

Regina Community Legal Services
2331-11th Avenue
REGINA S4P 0K2
(Phone 522-3641)

The Valley Legal Assistance Clinic Society
(Saskatoon Rural)
203 Avenue Building
220-3rd Avenue South
SASKATOON S7K 1L9
(Phone 244-0947)

The Saskatoon Legal Assistance Clinic Society
115-20th Street West
SASKATOON S7M 0W7
(Phone 653-5160)

The South West Community Legal Services
Society
Box 817
150-1st Avenue NW
SWIFT CURRENT S9H 3W8
(Phone 773-2904)

The Pasqua Community Legal Services Society
Box 2680
108 Burrows West
MELFORT S0E 1A0
(Phone 752-5717)

The Qu'Appelle Region Community Legal
Services Society
3-281 Albert Street
REGINA S4R 2N5
(Phone 545-8700)

The South East Saskatchewan Legal Services Society
Box 326
1314B-3rd Street
ESTEVAN S4A 2A4
(Phone 634-6449)

The Meadow Lake and District Legal Services Society
220 Centre Street
MEADOW LAKE S0M 1V0
(Phone 236-4464)

The Prince Albert and District Community Legal Services Society
100-11th Street East
PRINCE ALBERT S6V 1A1
(Phone 764-6823)

The Battlefords and Area Legal Services Society
1192-103rd Street
NORTH BATTLEFORD S9A 1K2
(Phone 445-6187)

The Parklands Legal Assistance Society
Box 69
8 Myrtle Avenue
YORKTON S3N 2V6
(Phone 783-6533)

Weyburn Legal Aid
Box 517
7-3rd Street NE
WEYBURN S4H 2K3
(Phone 842-5437)

Yetha Ayisiniwuk Legal Services Society
Box 510
LA RONGE S0J 1L0
(Phone 425-2130)

Welfare Rights

Saskatoon Self-Help Council
914A-20th Street West
SASKATOON S7M 0Y4
(Phone 665-6722)

Welfare Rights Centre
1843 Broad Street
REGINA S4P 1X8
(Phone 527-3521)